

MEHTA & MODI HOMES

5-4-187/3 & 4, IInd Floor, Soham Mansion, M.G. Road, Secunderabad – 500003
Phone: +91-40-66335551, Fax: 040-27544058

Date: 28th November 2012

The Commercial Tax Officer,
M.G. Road Circle,
Ameerpet, Hyderabad

Dear Sir,

We submit that with reference to the above assessment notice dated 24.8.2012 for the year 2007-08 & 2008-09

We have filed our objections through the following letters:-

1. Objections letter dated 13th September 2012
2. Objections letter dated 12th November 2012

In continuation of the same, we make the following further objections:-

The notice states that the specified turnover is taxable under Section 4 (7) (c) of the APVAT Act, 2005 @ 4% and not at the rate of 1% under Section 4 (7) (d). In that connection we have already filed detailed objections. The notice states that in the Advance Ruling No.80/2006 dated 30.7.2006 issued in the case of Maytas Hill County Limited, the following observation has been made by the Authority for Clarification and Advance Ruling (hereinafter referred to as ACAR).

“Second category reads as under

A piece of land belonging to the applicant is sold to the customer through a sale deed for the sale of land and then through a separate construction agreement the applicant takes up construction of a house on such land purchased by the customer. In this situation there is a sale deed for the sale of land and also a construction agreement between the applicant and the customer which is also Registered with the Sub-Registrar.

The applicant shall not be eligible for composition under Section 4 (7) (d) to pay tax @ 4% on 25% on the total consideration.”

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We submit that we have minutely gone through the said Advance Ruling and found that **the above portion in block letters is not found.** Your goodself has therefore extracted a sentence which is not there in the Ruling itself. Hence the entire notice based on such conclusion is not legal. We next submit that as regards second category of transaction, the following is the Ruling:-

“3) if the property is registered only as a land through a sale deed **in the second category of transactions** explained by the applicant and there is no subsequent registration after completion of construction , **the applicant shall ensure payment of 1% of total consideration received or receivable (as per initial agreement of sale)** by way of demand draft in favour of CTO/Asst.Commissioner concerned at the time of execution of sale deed before Sub-Registrar as prescribed in clause (i) of sub rule (4) of Rule 17 of AP.VAT Rules , 2005.”

It may kindly be seen from the above para (3) relating to ‘second category of transaction’, that the ACAR has in the most unambiguous terms expressly ruled that only 1% of the total consideration is payable. We fail to understand as to wherefrom the interpretation in the notice has been extracted. In our humble submission it is a misstatement of fact.

We next submit that in the above Ruling case, the applicant has categorically stated as follows, as could be seen from the Ruling itself.

“The applicant has further stated that, in both the situations , (where the land and house constructed thereon are sold through a single deed or where the land is first sold and a construction agreement in then entered into) the consideration received/receivable would be the same and this is clearly laid down in the initial agreement of sale.”

The case of Maytas is that in both the situations, there is ‘initial agreement of sale’, which is generally called ‘mother agreement’. In that agreement the entire price for the sale of land as well as construction cost is mentioned. This fact has been affirmed by the authority itself in the said Ruling as follows:-

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“In clause 2(a) , it is specified that developer and the landowner have agreed to sell the property consisting of a finished house for a total price specified in Schedule 2 of the agreement. **The specified price is found to be the total price for the land and construction cost.**”

Thus the case of Maytas is that whatever be the situation, the prospective buyer enters into an agreement for the purchase of a flat/bungalow/villa for a specified price, which includes both the value of land and construction cost. In this mother or initial agreement the full price is mentioned. As a consequence thereof, there is a sale deed for the sale of land/semi finished structure and then a construction agreement. The ACAR held that in a situation where the entire price is mentioned in the initial agreement, tax is payable only @ 1% under Section 4 (7) (d) of the Act.

In the Revision order No.LV (1)/464/2009 dated 29.6.2011 passed by the Honourable Commissioner in the case of Ambience Properties Limited, Hyderabad, it has been observed as follows:-

“One more crucial factor that clinches the status of the dealer company as nothing more than the contractor for the construction of the house, **is that in the original tripartite agreement the value of the house is not mentioned.** It is only the value of the land that finds place in that agreement. The deed for the sale of land subsequently registered also conforms to that value. The value of the house is mentioned only in the construction agreement between the dealer company and the purchaser of the plot. In the construction agreement the name of the original land owner does not appear. It is therefore unambiguously proved that the legal status of the dealer company is that of a contractor only for construction but not that of a contractor for construction and sale of apartments or residential houses specified under section 4(7)(d) of the APVAT Act. There is no element of sale in the house. There is no sale deed for the house and in the sale deed for the house site the value of the house is not included for payment of stamp duty. **It should be noted at this juncture that the Advance Ruling in Maytas case cited by the dealer company is based on the fact that in the tripartite agreement itself the value of the land, the value of the house are clearly mentioned either jointly or separately.** But in the present case the value of the house is not mentioned at all in the original tripartite agreement. The agreement only says that the dealer company who is a developer should be necessarily appointed as contractor. No further additional status is conferred on the dealer company. The house is constructed as per a works contract agreement the purchaser of the plot as contractee entered into with the dealer company as

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contractor. The dealer company is therefore assessable under 4(7) (c) of the APVAT Act, but not 4(7)(d) of the said Act.”

The Commissioner has categorically observed that if in the agreement for sale, the value of house is also mentioned as ruled in Maytas case, then tax can be paid under clause (d). In the case before the Commissioner, the value of house is not mentioned in the initial agreement. Hence tax has been levied under clause © of the Act.

We are squarely covered by the Ruling in Maytas case. The agreement of sale entered into by us with the prospective buyer clearly shows that what is agreed to be sold is only the ‘bungalow with land’ for a specified price. This fact cannot be brushed aside. We are squarely covered by the Mayatas Ruling and the Revision order of the Honourable Commissioner. In all cases, we have entered into Mother or Initial agreement, which clearly mentions the total price including the value of land and constructed bungalow. Hence, payment of tax under clause (d) is correct and such payment cannot be faulted with.

We request to kindly go through the Initial agreements of sale. We are once again filing sample copy of agreement for your kind perusal. For all these reasons, we request to kindly drop the proposal. If any further clarification is required we shall furnish the same.

Thanking you,

Yours faithfully

For MEHTA & MODI HOMES,



(SOHAM MODI)
Managing Partner