

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER  
“SMC”**

ITA No.156/Bang/2020
Assessment Year: 2015-16

M/s. Microsun Solar Tech Pvt. Ltd. #74/2-B, 16 <sup>th</sup> Cross Srigandhanagar, Hegganahalli Near Peenya Bengaluru 560 091.  <b>PAN NO : AAFCM1837P</b>	<b>Vs.</b>	ITO Ward-4(1)(3) Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri V. Srinivasan, A.R.
<b>Respondent by</b>	:	Shri Ganesh Ghale, Standing Counsel

<b>Date of Hearing</b>	:	29.03.2021
<b>Date of Pronouncement</b>	:	16.04.2021

**O R D E R**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The appeal filed by the assessee is directed against the order dated 8.7.2019 passed by Ld. CIT(A)-4, Bengaluru and it relates to the assessment year 2015-16. The assessee is aggrieved by the decision of Ld. CIT(A) in confirming the addition of Rs.15 lakhs made by the A.O. u/s 68 of the Act.

2. The appeal is barred by limitation by 119 days. The assessee has filed an application requesting the bench to condone the delay. It is stated in the petition that the assessee had handed over the order of Ld. CIT(A) to its authorized representative for taking further

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action. However, due to professional pressure, the authorized representative omitted to file the appeal in time. When the assessee received order of penalty u/s 271(1)(c) of the Act, it came to the notice of the assessee that the appeal has not been filed before the Tribunal. Accordingly, it was submitted that the delay has occurred due to reasons beyond control of the assessee. Accordingly, it was prayed that the delay may be condoned.

3. I heard Ld. D.R. and perused the record. Having regard to the submissions made by the assessee in his petition, I am of the view that there is reasonable cause for the assessee in not filing appeal in time. Accordingly, I condone the delay and admit the appeal for hearing.

4. On merits, I heard the parties and perused the record. The assessee is engaged in the business of manufacture of solar panels. The return of income filed by the assessee for the year under consideration was processed u/s 143(1) of the Act. Subsequently, the A.O. received information from DDIT (Inv.), Unit 7(4), Mumbai that a person named Shri Vipul Vidur Bhat has floated bogus entities and provided accommodation entries by way of bogus loan entries. One of the concerns floated by the above said person was M/s. Sampada Chemicals Ltd. It was noticed that the assessee herein has availed loan of Rs.15 lakhs from the above said concern. Since it was reported that the above said company is a paper company providing only accommodation entries, the A.O. reopened the assessment of the year under consideration by issuing notice u/s 148 of the Act.

5. In the reopened assessment, the A.O. brought to the notice of the assessee, the relevant reply given by Shri Vipul Vidur Bhat,

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wherein he has stated that M/s Sampada Chemicals Ltd. is a paper company used to provide bogus accommodation entries to various beneficiaries. The assessee, however, submitted that it has availed loan from M/s. Sampada Chemicals Ltd in the normal course and it has also repaid the same along with interest. The TDS was also deducted from the interest payments. The assessee further submitted that it was a genuine loan and it was taken on oral agreement. The A.O was not convinced with the explanations of the assessee. He took the view that loan was not genuine loan. In this regard, the A.O. placed reliance on the decision rendered by Hon'ble High Court of Delhi in the case of CIT Vs. Bikram Singh (ITA 55/2017). Accordingly, the A.O. made the addition of Rs.15 lakhs to the total income u/s 68 of the Act. The Ld. CIT(A) also confirmed the same.

6. The Ld. A.R. submitted that the assessee has availed loan through banking channels and it has also repaid the same through banking channels along with interest within one year of taking the loan. The assessee has also deducted TDS on the interest amount of Rs.1,37,250/- paid by the assessee. He submitted that in the case of accommodation entries, there will not normally be repayment of loan and also sometimes there will not be payment of interest also. The Ld. A.R. further submitted that the A.O. has taken a generalized view in respect of the impugned loan transaction without considering the factual aspects available in the instant case. He submitted that the assessee has furnished ledger account copies before the A.O. Since the assessee has completed the transaction in March, 2016 itself, it could not get confirmation from M/s. Sampada Chemicals Ltd., during the course of re-assessment proceedings that happened in 2018. The Ld. A.R. further submitted that the A.O. has placed reliance on the general

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statement given by Shri Vipul Vidur Bhat and the A.O has not shown that the loan transaction entered by the assessee with M/s. Sampada Chemicals Ltd., was pointed out to be bogus accommodation entries by Shri Vipul Vidur Bhat. He further submitted that the A.O. did not allow the opportunity of cross examination to the assessee when he is placing reliance on the statement given by Shri Vipul Vidur Bhat. He submitted that the Hon'ble Supreme Court, in the case of Andaman Timber Industries Vs. CIT (2015) 127 DTR 241, has held that non-providing of opportunity for cross examination is a serious flaw rendering the order a nullity in as much as it amounted to violation of principles of natural justice.

7. On the contrary, the Ld. D.R. submitted that the assessee did not ask for opportunity of cross examination before the A.O. and it is urged for the first time before the Tribunal. He further submitted that M/s. Sampada Chemicals Ltd., is controlled by Shri Vipul Vidur Bhat and he has admitted that the above said company is a bogus/paper company providing only accommodation entries. Further, the assessee has also has failed to prove the genuineness of the loan and hence the addition confirmed by Ld. CIT(A) was justified.

8. I notice from the assessment order that the A.O. has made the addition on the basis of information received from DDIT, Mumbai and he did not examine the explanations given by the assessee vis-a-vis the books of accounts. It is the submission of the assessee that the loan was taken by way of cheque and the same has been repaid within a period of one year along with interest. It is stated that the assessee has deducted TDS also from the interest payment. Further, the A.O. has relied on the generalized statement given by

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Shri Vipul Vidur Bhat. It is the contention of the Ld. A.R. that the assessee was not given opportunity to cross examine Shri Vipul Vidur Bhat, even though the A.O. has placed entire reliance on his statement disregarding the explanations given by the assessee.

9. Under these set of facts, I am of the view that the A.O. was not justified in making the addition wholly placing reliance on the statement given by Shri Vipul Vidur Bhat and without considering the explanations furnished by the assessee. In my view, the A.O. should have examined the ledger accounts of the assessee and also explanations furnished by it, surrounding circumstances etc. to find out the genuineness of the transactions. As contended by the assessee, I am of the view that the A.O. should have provided opportunity for cross examination. Under these set of facts, I am of the view that this issue requires fresh examination at the end of the A.O. Accordingly, I set aside the order passed by Ld. CIT(A) and restore this issue to the file of the A.O. with a direction to examine it afresh after affording adequate opportunity to the assessee. In case the assessee demands opportunity for cross examination of Shri Vipul Vidur Bhat, the A.O. should provide for the same. After that, the A.O. may take appropriate decision in accordance with law.

10. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 16<sup>th</sup> Apr, 2021

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 16<sup>th</sup> Apr, 2021.  
VG/SPS

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Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,  
ITAT, Bangalore.**