

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.328/Bang/2020
AssessmentYear: 2012-13

M/s. Sy Tech Engineering Pvt. Ltd. 1-C, Naidu Complex Basavanapura Main Road Ajith Layout Battarahalli Bangalore-560 049  <b>PAN NO :AAACX0182H</b>	<b>Vs.</b>	The ITO (TDS) Ward-3(2) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Smt. Prathibha R. Advocate
<b>Respondent by</b>	:	Smt. R. Premi, D.R.

Date of Hearing	:	28.09.2020
Date of Pronouncement	:	29.09.2020

**ORDER**

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

The assessee has filed this appeal challenging the order dated 28.01.2020 passed by Ld. CIT(A)-7, Bengaluru and it relates to the financial year 2012-13 relevant to the assessment year 2013-14. The assessee is aggrieved by the decision of Ld. CIT(A) in dismissing the appeal of the assessee on the ground that the appeal is barred by limitation.

2. Ld. A.R. submitted that the issue under consideration in the appeal is related to the fee charged u/s 234E of the Income-tax

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Act,1961 [the Act' for short] for filing quarterly returns of TDS belatedly beyond the prescribed time. Ld. A.R. submitted that the returns filed by the assessee were processed and fee u/s 234E of the Act was also levied. However, the assessee did not receive any intimation of processing of returns and the assessee came to know of the demand so raised u/s 234E of the Act, only when it received a letter dated 28.11.2018 issued by ITO(TDS), ward-3(2) Bengaluru intimating the details of outstanding demand. The Ld. A.R. submitted that the assessee filed the appeals before the Ld. CIT(A) immediately upon receipt of the above said letter. The appeal is filed within 30 days from the date of receipt of above said letter. However, the Ld. CIT(A) has taken the view that the date of intimation should be considered for determining the limitation period. Accordingly, the Ld. CIT(A) held that the appeal is barred by limitation by 3 to 4 years. Accordingly, the Ld. CIT(A) held that the appeal is inherently defective and not maintainable and accordingly dismissed the appeal in limine, without going into the merits.

3. The Ld.A.R. submitted that the assessee was under honest belief that the appeal was filed before the CIT(A) within the limitation period, as the assessee came to know of the outstanding demand only when it received the letter from ITO(TDS). Accordingly, the assessee did not file any petition seeking condonation of delay. Accordingly, the Ld. A.R. submitted that the Ld.CIT(A) was not justified in dismissing the appeal of the assessee in limini on the ground that the appeal is barred by limitation and condonation petition has not been filed.

4. On the contrary, The Ld. D.R. submitted that the intimation regarding processing of TDS returns is sent by E-Mail to the assessee and if the assessee does not note the E-Mail intimation, it

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is its fault. Accordingly, the Ld. D.R. submitted that the assessee was not correct in contending that the date of receipt of letter from ITO(TDS) to be taken as the date of intimation of processing of TDS returns. Since the assessee did not file any condonation petition, the Ld. CIT(A) has dismissed the appeal in limini.

5. We heard the parties and perused the record. It is the submission of Ld. D.R. that the intimation regarding processing of TDS returns is usually sent to the E-Mail ID of the assessee. Accordingly, the Ld. D.R. submitted that the details of processing of returns would have been sent to the E-Mail ID of the assessee and it is the assessee which has failed to take note of it and take appropriate action. However, it is the contention of the Ld. A.R. that the assessee is not aware of the demand raised while processing the return of TDS and it came to note of the same only when it received letter from ITO (TDS).

6. If the details of processing of return had been sent by the department to the E-Mail address of the assessee, then, in our view, the date of receipt of E-Mail should be taken as the date of receipt of intimation by the assessee and in that case, the period of limitation should be computed from that date. Since the assessee was under honest belief that the date of receipt of letter from ITO(TDS) should be considered for computing the limitation period, it was stated that it did not file any condonation petition before Ld. CIT(A). The Ld. A.R. also submitted that she was not aware of the details of the E-Mail, if any received by the assessee.

7. Since these factual aspects require verification and since the assessee was under honest belief as stated above and since the Ld. CIT(A) has not disposed the appeal on merits, we are of the view

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that the assessee should be provided with an opportunity to present the factual aspect before Ld. CIT(A). In case the assessee has received E-Mail, then, in the interest of natural justice, we are of the view that the assessee should be provided with an opportunity to file condonation petition.

8. Accordingly, we set aside the order passed by Ld. CIT(A) and restore all the issues to his file for examining them afresh. The assessee is also directed to verify the facts relating to E-Mail correspondences and present the correct facts before Ld. CIT(A) and if there is delay in filing appeal before him, the assessee is directed to file a petition for condoning the delay. After hearing the assessee, the Ld. CIT(A) may take appropriate decision in accordance with law.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 29<sup>th</sup> Sept, 2020.

**Sd/-**  
**(N.V. Vasudevan)**  
**Vice President**

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

Bangalore,  
Dated 29<sup>th</sup> Sept, 2020.  
VG/SPS

**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.