

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B": HYDERABAD  
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 472/H/2021 Assessment Year: 2016-17		
Income-tax Officer, Ward - 14(1), Hyderabad.	Vs.	Lakshmi Devi Suryadevera, Hyderabad.  PAN - ASIPS 3858E
(Appellant)		(Respondent)
Revenue by:		Shri Rohit Mujumdar
Assessee by:		Shri K.A. Sai Prasad
Date of hearing:		04/01/2022
Date of pronouncement:		06/01/2022

**ORDER**

**PER L.P. SAHU, A.M.:**

This appeal filed by the Revenue is directed against CIT(A) - 6, Hyderabad's order dated 14/03/2019 for AY 2016-17 involving proceedings u/s 143(3) of the Income Tax Act, 1961 ; in short "the Act on the following grounds of appeal:

*"1. The Ld. CIT(A) ought to have upheld the order of the A.O in disallowing the deduction of Rs.4,75,00,000/- as calculated by the assessee u/s.54GB of the I.T. Act.*

*2. The Ld. CIT(A) was not justified in allowing the deduction u/s.54GB of the IT Act, as the company M/ s, StyraX Labs Ltd, in whose shares the assessee has invested, has not utilized the same for purchase of machinery, within one year from the date of subscription in equity shares.*

*3. The Ld. CIT(A) is not justified in holding the advance payments as purchase.*

*4. Any other ground that may be urged at the time of hearing”.*

2. We notice at the outset that assessee's instant appeal suffers from 337 days delay in filing before the ITAT. In this connection, the revenue has filed a petition for condonation of the said delay wherein, inter-alia it was submitted that due to lock down imposed by the Govt. of India to contain spread of Corona Virus, at the relevant point of time, caused the impugned delay in filing the appeal belatedly. Considered the submissions of the ld. DR that the assessee was prevented by reasonable cause for not filing the appeal within the stipulated time. We rely on Case law Collector Land Acquisition Vs. Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We accordingly hold that revenue's impugned delay in filing this appeal is

neither intentional nor deliberate but due to the circumstances beyond its control. The same stands condoned. Case is now taken up for adjudication on merits.

3. Briefly the facts of the case are that the assessee is an individual and filed her return of income for the AY 2016-17 on 05.08.2016 declaring total income of Rs.55,34,510/-. Subsequently, the case was selected for limited scrutiny under CASS and accordingly, statutory notices issued u/s.143(2) / 142(1) of the Act to the assessee. The AR of the assessee furnished the information called for by the AO.

3.1 After verification of the information furnished by the assessee, the AO completed the assessment u/s.143(3) vide order dated 30.12.2018 determining the total income at Rs.4,66,29,640/-. While doing so, the AO added an amount of Rs. 4,10,95,133/- towards long term capital gains by observing in the assessment order as under:

*"During the scrutiny proceedings, it is observed from the documents submitted by the assessee that, the assessee claimed (i) cost of construction during F. Y. 2005-06 of Rs. 24,41,403/- (ii) cost of construction during F. Y. 2006-07 of Rs. 10,75,394/- (iii) Deduction u/s 54EC of Rs.50,00,000/- (iv) Deduction u/s 54GB of Rs. 4,72,00,000. In response, the assessee submitted that, the assessee sold her property bearing Plot No. 260 admeasuring 600 Sq. Yds situated at MLA & MP's colony, Road No. 10C, Jubilee Hills, Hyderabad, in which the assessee has 50%, for a sale consideration of Rs. 12.00 Crores vide Registered sale deed Document*

No.0000/0000 on 15.02.2016 which the same originally purchased by the assessee, with having 50% share, for a sale consideration of Rs.33,00,000/- excluding Registration charges of Rs. 4,51,220/- vide Registered Sale deed Document No. 3788/2004 on 07.10.2004. Accordingly, now the assessee admitted sale consideration at her hands at Rs. 6.00 Crores and cost of improvement took place, thereafter. With reference to the cost of construction during the F. Y. 2005-06 of Rs. 24,41,403/-, the assessee submitted that, the assessee along with other co-owner has constructed a triplex residential house spread over 5395 Sq. Ft., and the total cost of construction of the building was es. 70,33,594/- spread over two F.Ys. i.e. 2005-06 and 2006-07. Further, the assessee submitted that, the assessee claimed 50% of total cost of construction, towards his 50% share i.e. 2,698 i.e. 50% of 5,395 sq.ft., 50% Share, of Rs. 70,33,597/- i.e. Rs. 35,16,797/- (RS.24,41403 + Rs. 10,75,394) (without indexation). The assessee claimed that the main source for construction were sale proceeds from shares of . Mylan Laboratories Ltd. and loan from Mr. S. V. Rao. In support, the assessee submitted the copies of ledger extracts of construction.

Disallowance on cost of construction:

It was seen from the computation of the long term capital gains that the assessee had claimed cost of construction of the building at Rs.35,16,797/- (without indexation) towards 50% share i.e.2,698 i.e. 50% of 5,395 sq.ft. The assessee was asked to produce documentary proof in respect of the cost of construction claimed by her. The assessee only produced an account extract for the same no supporting bills were produced. The cost of construction claimed works out to around Rs, 1,300 per sft. As this appeared to be on a higher side, information was a obtained from Joint Sub-Registrar Hyderabad(South) dated 12,11,2018 regarding the cost

*of construction per sft. during the period of construction of the assessee was taken as per which the cost of construction given by the SRO for that period works out to Rs.475/- per sft taking average of the construction cost given by the SRO for the period under consideration.*

*Even considering the fact that the assessee's construction is a superior quality the cost of construction would not be more than RS.800 per sft. As the assessee has not produced any documentary evidence except account extract and bank statement which cannot be correlated, the cost of the construction is worked out adopting Rs.800 per sft for 2,698 sft of constructed area of the assessee which works out to RS.21,58,400/and the indexation is allowed in the proportion claimed by the assessee as under:*

*Total cost of construction worked out as above :* *Rs.21,58,400*

*(i)Proportionate cost of construction for the F. Y.2005-06:* *Rs. 14,98,387*

*(ii)Proportionate cost of construction for the F. Y.2006-07:* *Rs.6,60,013*

*With reference to the claim of deduction u/s 54EC of Rs. 50,00,000/- the assessee submitted that, the assessee subscribed to 500 bonds of National Highways Authority of India (NHAI) at Rs. 10.000 - each totalling to an amount of Rs. 50,00,000/- within six months period from the sale of the scheduled property. In support, the assessee submitted the copy of Bond Certificate issued by NHAI, in the name of the assessee, showing the deemed date of allotment as 31.08.2016. The supporting documents submitted by the assessee are duly verified as per the provisions of the section 54EC of the I. T. Act, 1961 and found to be in order.*

**Disallowance of deduction claimed u/s.54GB:**

*During the course of assessment proceedings, it is observed that the assessee has claimed deduction u/s 54GB of the IT Act, 1961. In this regard the assessee was requested to furnish documentary evidence in support of her claim. In response to the same, the assessee vide letter dated 01.12.2018 filed its reply.*

*I have carefully considered the submissions made by the assessee as well as evidence furnished. In this regard, the condition (iii) laid down u/s 54GB is reproduced hereunder:*

*"(iii) the company has, within one year from the date of subscription in equity shares by the assessee utilized this amount for purchase. of new asset"*

*In the instant case, the assessee has invested in the equity shares of Mis StyraX Laboratories Pvt. Ltd., on 30.07.2016. as per the share certificates issued by Mis StyraX Laboratories Ltd., As per the condition (iii) of sec.54GB of the I.T. Act, 1961, the company in which the assessee purchased equity shares have to purchase new asset within one year from date of subscription to the equity shares. Therefore, the company should have purchased new asset on or before. 30.01.2011. Accordingly, during the scrutiny assessment proceedings, the annual report of M/s StyraX Laboratories Pvt. Ltd., for the F. Y.2017-18 , as called for by DCIT, Circle14(1), Hyderabad, is taken and verified. As seen from the schedule - Fixed assets of the company for the F. Y.2017-18 is enclosed as Annexure-1 to this order, it is noticed that the additions in the Depreciation Schedule submitted relates only to the vehicle is at Rs.25,26,112/- and there are no other assets including Plant & Machinery. From the above, it is clear that the condition (iii) laid down in the sec. 54GB has not been satisfied. Further, the case laws relied upon by the assessee are not relevant as these*

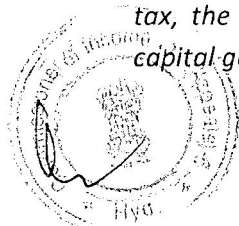
case laws do not pertain to the provisions of Sec. 54GB of the IT Act, 1961. Therefore the claim of deduction u/s 54GB is disallowed and added to the income returned.

Accordingly, the Long term capital gains of assessee are recomputed as under:

Sale consideration of property in respect of ½ share :	6,00,00,000
Less: (i) Indexed cost of purchase :Rs.42,24,030	
(ii) Indexed cost of construction for	
F.Y.2005-06: $\frac{14,98,387 \times 1081}{497}$ :Rs.32,59,067	
(iii) Indexed cost of construction for	
F.Y.2006-07: $\frac{6.60.013 \times 1081}{519}$ : Rs.13.74.709:	88,57,806
	5,11,42,197
Less: Investment U/s.54BC	50,00,000
<b>Long term capital gains</b>	<b>4,61,42,197</b>

As the assessee has offered net long term capital gain of Rs.50,47,064/- to tax, the balance amount of Rs.4,10,95,133/- is added to the Long term capital gain of assessee and brought to tax.

Addition: Rs. 4,10,95,133/-"



4. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and the CIT(A) after considering the submissions of the assessee, directed the AO to allow the assessee's claim of deduction u/s 54GB by observing as under:

**Left space intentionally**

7.0 **Ground Nos.3, 4 & 5:** These three grounds are with regards to disallowance of claimed of deduction u/s.54GB of the Act. The relevant part of the assessment order is already reproduced in the preceding paras. The assessee's submission is also reproduced in the statement of facts. The main crux of the matter is that out of sale consideration of Rs.6,00,00,000/- received on transfer of ½ share of the residential property, the assessee had invested an amount of Rs. 4.75 crores towards subscription of equity in M/s. Styrax Labs Ltd. The assessee was allotted 47,50,000 equity shares and thus acquired a 48.71% stake. The assessee was issued share certificates for 47,50,000 equity shares @ Rs.10 per share. M/s.Styarx Labs was incorporated on 16/3/2016 and was coming up with a Pharma Plant at Vizag and these monies were invested in paying advances for purchase of plant and machinery.

7.1 The AO after scrutinising the financials of the company for the FYs 2016-17 and 2017-18 concluded that as per the Fixed Asset Schedule for the FY 2017-18, additions to the depreciation schedule show addition to vehicles valued at Rs.25,26,112/- and there are no assets including plant and machinery. Hence, the AO disallowed the claim of deduction u/s. 54GB of the

**Left space intentionally**

ITA No.10679/2018-19/A2/CIT(A)-6  
Page 12 of 18

7.2 During the appellate proceedings, the assessee submitted that the cash flow statement which is a part of the financials and note 2.5 of the Financial Statements clearly indicate payment of advances for plant and machinery. A scanned copy of Notes annexed to and forming part of the Balance Sheet as on 31.03.2017 is reproduced below for ready reference:

2.5 Short term Loans & Advances		(Amount in ₹)
Particulars	2016-17	
Advance given to Creditors for capital goods	96,521,160	
	96,521,160	

Notes annexed to and forming part of the Profit & loss

2.6 Other Expenses		(Amount in ₹)
Particulars	2016-17	
Bank Charges	1,093	
Office Expenses	49,840	
Preliminary Expenses Written Off	208,622	
Printing & Stationary	2,740	
Professional Charges	15,000	
Rates & Taxes	1,000	
	278,295	



7.3 It was submitted that the orders for purchase of machinery was finalised and the same were installed in the FY 2018-19. The assessee submitted purchase invoices and GST returns reflecting tax credits. Further, the assessee submitted that there was some delay in finalising the designs of



Smt. Lakshmi Devi Suryadevara  
AY 2016-17

machinery and the condition u/s. 54GB specifies that the machinery needs to be purchased within specified timelines without any conditions in relation to commencement of business or production.

7.4 The payment of advances was taken to the purchase of machinery for the purpose and intent of section 54GB of the Act. It was contended that payment of advances, subsequently converted into purchases would be valid a utilisation for claim of deduction u/s. 54GB of the Act. The assessee also relied on the Judgement of **Hon'ble Supreme Court** in the case of **Fibre Boards (P) Ltd, 376 ITR 596** in support of her contention.

7.5 Let us reproduce the section 54GB for the sake of clarity:

*"After section 54GA of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2013, namely:—*

*'54GB. Capital gain on transfer of residential property not to be charged in certain cases.—(1) Where,—*

*(i) the capital gain arises from the transfer of a long-term capital asset, being a residential property (a house or a plot of land), owned by the eligible assessee (herein referred to as the assessee); and*

*(ii) the assessee, before the due date of furnishing of return of income under sub-section (1) of section 139, utilises the net consideration for subscription in the equity shares of an eligible company (herein referred to as the company); and*

*(iii) the company has, within one year from the date of subscription in equity shares by the assessee, utilised this amount for purchase of new asset,*

*then, instead of the capital gain being charged to income-tax as the income of the previous year in which the transfer takes place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—*

*(a) if the amount of the net consideration is greater than the cost of the new asset, then, so much of the capital gain as it bears to the whole of the capital gain the same proportion as the cost of the new asset*

*bears to the net consideration, shall not be charged under section 45 as the income of the previous year; or*

*(b) if the amount of the net consideration is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45 as the income of the previous year.*

*(2) The amount of the net consideration, which has been received by the company for issue of shares to the assessee, to the extent it is not utilised by the company for the purchase of the new asset before the due date of furnishing of the return of income by the assessee under section 139, shall be deposited by the company, before the said due date in an account in any such bank or institution as may be specified and shall be utilised in accordance with any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and the return furnished by the assessee shall be accompanied by proof of such deposit having been made.*

*(3) For the purposes of sub-section (1), the amount, if any, already utilised by the company for the purchase of the new asset together with the amount deposited under sub-section (2) shall be deemed to be the cost of the new asset:*

**Provided** that if the amount so deposited is not utilised, wholly or partly, for the purchase of the new asset within the period specified in sub-section (1), then,—

*(i) the amount by which—*

*(a) the amount of capital gain arising from the transfer of the residential property not charged under section 45 on the basis of the cost of the new asset as provided in sub-section (1), exceeds—*

*(b) the amount that would not have been so charged had the amount actually utilised for the purchase of the new asset within the period specified in sub-section (1) been the cost of the new asset,*

*shall be charged under section 45 as income of the assessee for the previous year in which the period of one year from the date of the subscription in equity shares by the assessee expires; and*



- (ii) *the company shall be entitled to withdraw such amount in accordance with the scheme.*
- (4) *If the equity shares of the company or the new asset acquired by the company are sold or otherwise transferred within a period of five years from the date of their acquisition, the amount of capital gain arising from the transfer of the residential property not charged under section 45 as provided in sub-section (1) shall be deemed to be the income of the assessee chargeable under the head "Capital gains" of the previous year in which such equity shares or such new asset are sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of shares or of the new asset, in the hands of the assessee or the company, as the case may be.*
- (5) *The provisions of this section shall not apply to any transfer of residential property made after the 31st day of March, 2017.*
- (6) *For the purposes of this section,—*
- (a) *"eligible assessee" means an individual or a Hindu undivided family;*
- (b) *"eligible company" means a company which fulfils the following conditions, namely:—*
- (i) *it is a company incorporated in India during the period from the 1st day of April of the previous year relevant to the assessment year in which the capital gain arises to the due date of furnishing of return of income under sub-section (1) of section 139 by the assessee;*
  - (ii) *it is engaged in the business of manufacture of an article or a thing;*
  - (iii) *it is a company in which the assessee has more than fifty per cent share capital or more than fifty per cent voting rights after the subscription in shares by the assessee; and*
  - (iv) *it is a company which qualifies to be a small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006 (27 of 2006);*
- (c) *"net consideration" shall have the meaning assigned to it in the Explanation to section 54F;*
- (d) *"new asset" means new plant and machinery but does not include—*

- (i) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person;
- (ii) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house;
- (iii) any office appliances including computers or computer software;
- (iv) any vehicle; or
- (v) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any previous year.'."

7.6 The assessee has transferred Rs.4,75,00,000/- as advance payment to M/s. Strax Labs Pvt. Ltd. through banking channel on several dates starting from 16.07.2016 to 30.07.2016 during the FY 2016-17 relevant to the AY 2017-18. The share certificates were allotted in the month of July, 2016. The investment was made, share certificates were allotted and the investment was reflected in the cash flow statements as well as notes to the financials as advances towards Purchase of Machinery for the year ending 31.03.2017. The **Hon'ble Supreme Court** in Para 36 of its order held that "**section 54G makes it clear that the assessee is given a window of three years after the date on which transfer has taken place to purchase new machinery or plant or acquire building or land**". In Para 31 of the order, the meaning of purchase has also been defined and elaborated to include payment of advance amounts.

7.7 The assessee has strongly contended that this decision of the **Hon'ble Supreme Court** is applicable to the assessee's case although it is delivered in the context of provisions of section 54G as both 54G and 54GB are *pari materia*, the language of the section 54GB is different.



*“Capital gain on transfer of residential property not to be charged in certain cases.—(1) Where,—*

*(i) .....*

*(ii) .....*

*(iii) the company has, within one year from the date of subscription in equity shares by the assessee, utilised this amount for purchase of new asset,”*

The Company should have utilized this amount **within one year from the date of subscription of equity shares for purchase of new asset. This has not been happened in the assessee's case. The amounts were reflected as advances made for purchase of machinery. So now the moot question is whether advance payments can be considered as Purchase?**

7.8 Let us read Para 38 of the **Hon'ble Supreme Court's** order:

*“Advances paid for the purpose of purchase and /or acquisition of the aforesaid assets would definitely amount to utilisation by the assessee of the capital gains for the purpose of purchasing and/or acquiring the aforesaid assets. We find therefore that on this ground also, the assessee is liable to succeed”...*

7.9 The assessee has invested the net consideration received on transfer of the long term capital asset (transferred in February 2016) in the equity shares of an eligible company before the due date of filing return of income u/s.139(1) by subscribing to equity shares in July 2016 and the company has allotted the shares in July, 2016. The company, M/s. Styrax Labs has in its annual report for the FY 2016-17 in the notes to the balance sheet has vide note 2.5 mentioned that it had given advances amounting to Rs.9.65 crores for purchase of capital goods. The purchases were made and the machinery was installed in the FY 2018-19.

7.10 It is clear that the entire amount has been utilised for the purchase of new machinery or plant and is evident from the purchase invoices and notes to the financials. **Accordingly, the AO is directed to allow the claim of deduction U/s.54GB of the Act. Hence, Ground Nos. 3, 4 & 5 are allowed.**

5. Aggrieved by the order of the CIT(A), the revenue is in appeal before the ITAT.

6. Before us, the Id. DR besides relying on the order of the AO, contended that the CIT(A) was not justified in allowing the deduction u/s 54GB of the Act as the company M/s StyraX Labs Ltd. in whose shares the assessee has invested, has not utilized the same for purchase of machinery within one year from the date of subscription in equity shares, as per condition (iii) of section 54GB the company in which the assessee purchased equity shares have to purchase new asset within one year from the date of subscription to the equity shares. He, therefore submitted that the AO has rightly disallowed the assessee's claim of deduction u/s 54GB and, hence, the order of the AO may be restored by setting aside the order of CIT(A).

7. The Id. AR of the assessee, on the other hand, relied on the order of the CIT(A) and submitted that out of sale consideration of Rs. 6,00,00,000/- received on transfer of ½ share of the residential property, the assessee had invested an amount of Rs. 4.75 crores towards subscription of equity in M/s StyraX Labs Ltd. and the assessee was allotted

46,50,000 equity shares and thus acquired a 48.71% stake for which share certificates were issued for equity shares @ Rs. 10 per share. He submitted that M/s Styarx labs was incorporated on 16/03/2016 and was coming up with a Pharma plant at Vizag and these monies were invested in paying advances for purchase of plant and machinery. He submitted that the payment of advances taken to the purchase of machinery for the purpose and intent of section 54GB and, therefore purchases would be valid utilization for claim of deduction u/s 54GB of the Act. He, therefore, submitted that the CIT(A) after considering the facts of the case, directed the AO to allow the claim of the assessee u/s 54GB, hence, the order of the CIT(A) may be upheld.

8. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The crux of the issue in dispute is that out of sale consideration of Rs. 6,00,00,000/- received on transfer of ½ share of the residential property, the assessee had invested an amount of Rs. 4.75 crores towards subscription of equity in M/s Styrax Labs Ltd. and the same was claimed as deduction u/s 54GB of the Act. The AO after scrutinizing the financials of the company for the FYs 2016-17 and 2017-18 concluded that as per the fixed assets schedule for the FY 2017-18, additions to the depreciation schedule show addition to vehicles valued at Rs. 25,26,112/- and there are no assets including plant and

machinery and, hence, disallowed the claim of deduction u/s 54GB of the Act. The CIT(A), on the other hand, observed that the assessee had invested the net consideration received on transfer of the long term capital asset (transferred in February, 2016) in the equity shares of an eligible company before the due date of filing of return of income u/s 139(1) by subscribing to equity shares in July 2016 and the company has allotted the shares in July, 2016, The company M/s Styrax Labs has in its annual report for the FY 2016-17 in the notes to the balance sheet has vide note 2.5 mentioned that it had given advances amounting to Rs. 9.65 crores for purchase of capital goods. The purchases were made and the machinery was installed in the FY 2018-19. In view of the above observations, the CIT(A) held that the entire amount has been utilized for the purchase of new machinery or plant and is evident from the purchase invoices and notes to the financials. Accordingly, he directed the AO to allow the assessee's claim of deduction u/s 54GB of the Act. The CIT(A) relied on the judgment of the Hon'ble Supreme court in the case of Fibre Boards (P) Ltd., 376 ITR 596, on which reliance placed by the assessee. On considering the totality of the facts and circumstances of the case, we do not find any infirmity in the decision of the CIT(A) in directing the AO to allow the assessee's claim of deduction u/s 54GB of the Act. Accordingly, the grounds raised by the Revenue on this issue are dismissed.

9. In the result, appeal of the revenue is dismissed in above terms.

Pronounced in the open court on 6<sup>th</sup> January, 2022

**Sd/-**  
**(S.S. GODARA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(L. P. SAHU)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 6<sup>th</sup> January, 2022.

*kv*

*Copy to :*

1	<i>ITO, Ward - 14(1), Room No. 633, 6<sup>th</sup> Floor, "C" Block, IT Towers, AC Guards, Hyderabad - 500 004.</i>
2	<i>Smt. Lakshmi Devi Suryadevera, Plot No. 260, MLA &amp; MPs Colony, Road No. 10C, Jubilee Hills, Hyderabad - 500 033</i>
3	<i>CIT(A) - 6, Hyd.</i>
4	<i>Pr. CIT - 1, Hyderabad.</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>