

**INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH "SMC": AGRA
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
(Through virtual hearing)**

**ITA No. 316/AGR/2024
(Assessment Year: 2016-17)**

Sharad Maheshwari, W-63, 3 rd Floor, Greater Kailash-2, South Delhi (Appellant)	Vs.	Income Tax Officer, Ward-3(2), Gwalior (Respondent)
PAN: AFEP A7981H		

Assessee by :	Shri Ashok Vijaywargiya, CA
Revenue by:	Shri Anil Kumar, Sr. DR
Date of Hearing	18/09/2025
Date of pronouncement	30/09/2025

ORDER

1. The appeal in ITA No. 316/AGR/2024 for AY 2016-17, arises out of the order of the Id. Jt. Commissioner of Income Tax (Appeals)-13, Mumbai [hereinafter referred to as 'Id. JCIT(A), in short] dated 05.07.2024 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 19.12.2018 by the Assessing Officer, ITO, Ward-3(2), Gwalior (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal:-

"1. That, on the facts and circumstances of the case and in law, and in any view of the matter, the Ld. Authorities below have erred in making and upholding the addition of Rs. 10,94,000/- (5,00,000 +5.90,000) in respect of gift received from Smt. Shashi Bausal, sister of the appellant mentioning in the appeal order that no new facts are emerged before the undersigned, which lead to allow the appellant's plea, whereas, the appellant has submitted the explanation.

2 2. That, on the facts and circumstances of the case and in law, and in any view of the matter, the Ld. Authorities have erred in making and upholding the addition of Rs. 6,25,000/- from Smt. Manju Agarwal, Sister of the

appellant mentioning that the appellant could not succeed to explain the genuineness of the transaction as claimed as gift and source thereof, whereas, the appellant submitted the explanation.

3 3. That, on the facts and circumstances of the case and in law, and in any view of the matter, the Ld. authorities below have erred in not allowing the reasonable and proper opportunity of hearing by way of opportunity of personal hearing to substantiate the contents prior to drawing adverse inference while passing the impugned appeal order inspite of specifically requested in last para of written submission dated 27.06.2024 before the Ld. Commissioner of Income Tax (Appeals).

4 4. That, the appellant craves leave to add, amend, withdraw any ground (s) of appeal before and or at the time or hearing."

3. I have heard the rival submissions and perused the materials available on record. The return of income for the assessment year 2016-17 was filed by the assessee on 27-03-2017 declaring total income of Rs 10,80,770/-. The return was selected for scrutiny vide issuance of notice under section 143(2) of the Act on 19-09-2017. The learned AO in para 1 of the assessment order stated that assessee had furnished the replies through online and provided documents vouching his claims. The assessee derives income from profits of firms wherein he is a partner. The learned AO observed that assessee had claimed an increase of Rs 1,83,77,061/- in his capital for the year under consideration. The assessee in his reply had claimed to have introduced a capital of Rs 3,67,500 and Rs 1,80,09,561 in his proprietorship concerns SM advisors and consultants and SM builders and developers respectively. The source of these capital introduced has been explained by the assessee to be the gift of Rs 2,74,33,250/- received from her sister Mrs. Shashi Bansal, resident of F-303, Saritha Vihar, New Delhi-110076 PAN- AAUPB6378F and she has also declared the same in her income tax return. The assessee also claimed to have received gifts from Manju Agarwal of Rs 6,25,000/-, among other parties. The assessee submitted the documents regarding the creditworthiness of these persons

from whom gifts have been received. The learned AO considered the part of the gifts received from the aforesaid persons as genuine and disbelieved the factum of gifts received from Mrs. Shashi Bansal on 15-04-2015 of Rs 5,00,000/-; on 15-05-2015 of Rs 5,00,000/- and gift received from Manju Agarwal of Rs 6,25,000/- for want of supporting documents. The learned AO accordingly added the said sums represented as gifts as a colourable device to avoid taxation under the Income Tax Act and added the same as unexplained cash credit under section 68 of the Act in the assessment.

4. The assessee preferred an appeal before the Learned CITA. It was submitted before the Learned CITA that Mrs. Shashi Bansal had sold the property and had received cash thereon which has been as gift to the assessee herein. The Learned CITA, however, observed that the cash received by Smt Shashi Bansal in the sums of Rs 5,00,000/- and Rs 5,94,000/- were not found reflected in the sale deed submitted by the assessee. Further, scrutiny assessment under Section 143(3) of the Act was not framed by the Income Tax Department on Smt Shashi Bansal. For these two reasons, he upheld the addition made by the Learned AO by treating the gift of Rs 10,94,000/- received from Smt Shashi Bansal as unexplained cash credit under Section 68 of the Act for not proving the creditworthiness of the donor.

5. With regard to gift received from Smt Manju Agarwal, sister of the assessee in the sum of Rs 6,25,000/-, the assessee submitted that the said amount was transferred by Smt Manju Agarwal out of her personal funds accumulated in the bank account. The assessee further submitted the copy of confirmation and stated that gift of Rs 6,25,000/- was received on 24-09-2015 out of the total amount debited of Rs 9,50,063/- in bank

account including Rs 63/- as bank charges. The assessee submitted his bank account statement wherein Rs 9,50,000/- was reflected on 24-09-2015. The Learned CITA, however, observed that the submission of the assessee was not found satisfactory since this explanation was not given by the assessee before the Learned AO and dismissed the plea of the assessee as an afterthought. Aggrieved, the assessee is in appeal before us.

6. I find that the assessee had furnished the following documents before the lower authorities:-

- a) Copy of declaration of gift of Smt Manju Agarwal along with her bank statement enclosed in Pages 1 to 4 of the Paper Book.
- b) Copy of confirmation letter of gifts from Smt Shashi Bansal enclosed in Page 5 of the Paper Book.
- c) Copy of sale deed for Rs 20,08,800/- in which Smt Shashi Bansal received Rs 5,00,000/- in cash on 15-4-2015 enclosed in Pages 6 to 17 of the Paper Book.
- d) Copy of sale deed for Rs 6,24,000/- in which Smt Shashi Bansal received Rs 5,99,000/- in cash on 15-5-2015 enclosed in Pages 18 to 28 of the Paper Book.
- e) Copy of bank statements of assessee enclosed in Pages 29 to 51 of the Paper Book.

7. The Learned AR drew my attention to the sale deed wherein Smt Shashi Bansal had received sale consideration in cash and had given that cash as cash gift to the assessee herein. It is not in dispute that Smt Shashi Bansal is the real sister of the assessee. The factum of sister giving gift to brother is also supported by confirmation. Hence in my considered opinion,

the source of the donor is also established by the assessee herein in the instant case. Further the Learned AR submitted that Smt Shashi Bansal had duly paid capital gains tax for the sale of property. Further I find that the Learned CITA had stated that Smt Shashi Bansal has not been subjected to scrutiny assessment under section 143(3) of the Act. This cannot be a reason to disbelieve the gift and doubt the creditworthiness of Smt Shashi Bansal. IT is not in assessee's hands as to get the returns of Smt Shashi Bansal scrutinized. That job is left to the wisdom of the income tax department. The assessee cannot be faulted for an act which is not in his control. Hence there is no reason to disbelieve the creditworthiness of Smt Shashi Bansal to have given cash gift of Rs 10,94,000/- to the assessee and accordingly the same is to be treated as explained.

8. With regard to gift received from Smt Manju Agarwal, another sister of the assessee, it is to be noted that the same has been received by way of cheque out of funds available in the bank account of the donor. The assessee on his part had furnished the gift declaration and confirmation from the donor duly explaining the source of the donor and the same is enclosed in Page 1 of the Paper Book. The bank statements of the donor was also furnished by the assessee to prove the creditworthiness. If at all, the Learned AO entertains any suspicion thereon, nothing prevented him from making enquiries with Smt Manju Agarwal. This was admittedly not done by the Learned AO in the instant case. In these circumstances, no fault could be attributed on the assessee for the failure on the part of the Learned AO to make suitable enquiries. The assessee from his side had furnished all the requisite documents to establish the three ingredients of section 68 of the Act viz identity of the donor, creditworthiness of the donor and genuineness of transactions. The transactions are routed through banking channels and stood duly confirmed by the donor. Hence genuineness of transactions

stands established. The name and address of the donor, being real sister of the assessee, had been duly given and hence the identity of the donor had been established. The bank statements of the donor had been furnished wherein the transfer of funds from the available bank balance is proved beyond reasonable doubt. Hence the creditworthiness of the donor is also established by the assessee. Hence there is no reason to disbelieve the creditworthiness of Smt Manju Agarwal to have given gift of Rs 9,50,000/- to the assessee and accordingly the same is to be treated as explained.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 30/09/2025.

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 30/09/2025
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi