

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 7274/DEL/2019
[Assessment Year: 2013-14]**

Income-tax Officer,
Ward-2(1), Moradabad.

Vs Abhishek Agarwal,
Prop. M/s R.K. Gifts,
Amroha Gate,
Moradabad

PAN: AFZPA0629R

APPELLANT

RESPONDENT

**Assessee represented by:
Department represented
by:**

None
Sh. Jitendra Chand, Sr. DR

Date of hearing

04.10.2022

Date of pronouncement

18.10.2022

ORDER

PER N.K.CHOUDHRY, JM:

The Revenue/Department has preferred the instant appeal against the order dated 27-06-2019 impugned herein, passed by the Ld. Commissioner of Income tax (Appeals), Moradabad (in short "Ld. Commissioner") u/s 250(6) of the Income Tax Act, 1961 (in short "the Act"), pertaining to the assessment year 2013-14.

2. Though notice of hearing on 4.10.2022 was sent to the Assessee at the address mentioned in Form no. 36, however, the Assessee neither appeared nor filed any adjournment application. Hence, in the constrained circumstances, we are inclined to decide this appeal *ex parte*.

3. By perusing the orders passed by the authorities below and hearing the learned DR, we observe that the AO vide order dated 3.3.2016 passed u/s 143(3) of the Act, made various additions including addition of Rs. 1,55,60,374/- on account of purchase of exempt goods in cash out of books of account. The Assessee being aggrieved against the additions made by the AO including the addition referred to above, preferred first appeal before the Id. Commissioner.

3.1 The Ld. Commissioner on appeal, deleted the said addition, by relying upon the order dated 30.04.2015 passed by its predecessor, wherein the similar addition made by the

AO u/s 143(3) of the Act was under challenge and the same was deleted by observing **“that no inquiries are carried out by the AO, no material is brought by the AO on record in respect of this addition. Only material available with the AO was report of ITI, which is also in form of opinion of various parties in the market. No cogent material has been collected and placed on record.”**

3.2 The Ld. Commissioner further held that no addition can be made u/s 144 of the Act, without bringing necessary evidence on record, further a fair and honest estimate has to be made. Further each assessment year is a separate unit. Therefore, addition cannot be made by the AO only, by relying on the assessment orders of the previous years.

3.3 We observe that on one side, the Ld. Commissioner held that each assessment year is a separate unit and therefore addition cannot be made by the AO only by relying on the assessment orders of the previous year, on the

contrary the Ld. Commissioner itself by relying upon the order of its predecessor for the A.Y. 2012-13 and without making any independent inquiries, as the Ld. CIT(A) has also co-terminus power of the AO, deleted the addition under consideration. Hence, we are inclined, not to sustain the action of the Ld. Commissioner and considering the peculiar facts and circumstances, deem it appropriate to set aside the issue under consideration qua addition of Rs. 1,55,60,374/- made u/s 69 of the Act on account of investment in purchase of exempt goods from undisclosed sources, to the file of the Assessing Officer for decision afresh with direction to carry out independent inquiries and to collect cogent material before deciding the issue and without being influenced by assessment orders of the previous years. Consequently the impugned order is set aside.

4. In the result, Revenue/Department's stands allowed for statistical purposes.

Order pronounced in open court on 18.10.2022.

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER
MP

Sd/-

(N.K.CHOUDHRY)
JUDICIAL MEMBER