

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, KOLKATA**  
 [Before Shri A. T. Varkey, JM & Shri Rajesh Kumar, AM]

**I.T.A. No. 355/Kol/2020**  
 Assessment Year: 2012-13

Pushkar Trading & Holding Pvt. Ltd. (PAN: AABCP 5975 D)	Vs.	ACIT (OSD), Ward-12(3), Kolkata
Appellant		Respondent

Date of Hearing (virtual)	05.01.2022
Date of Pronouncement	02.02.2022
For the Appellant	Shri Miraj D Shah, A.R.
For the Respondent	Shri Sudipta Guha, CIT DR

**ORDER**

**Per Shri A.T.Varkey, JM**

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-4, Kolkata dated 28.02.2019 for AY 2012-13.

2. At the outset the Ld. A.R. of the assessee Shri Miraj D Shah drew our attention to the fact that this is an ex-parte order passed by the Ld. CIT(A). According to Ld. A.R. the assessee received first notice dated 13.02.2018 and the assessee later had appeared on 26.07.2018 and sought adjournment which has been acknowledged by the Ld. CIT(A). However since the assessee did not receive the notice fixing the date of hearing on 25.02.2019, therefore it could not appear before him; and the Ld. CIT(A) taking note that the assessee has not appeared before him has passed the ex-parte order without going into the merits of the grounds of appeal raised by the assessee. Further according to Ld. A.R., in the meanwhile there has been certain development in the case of assessee. After the impugned assessment was framed against the assessee, a search was carried out by the Department wherein the statement of director of this assessee company Shri Subhash Chandra Bhatia was recorded on 3.1.2018 u/s 132(4) of the Income Tax Act 1961 (herein after referred to as the Act). He drew our attention to question no. 5 wherein the department had asked about the companies/LLP's which are controlled by him and the answer by him has been given in page nos. 3 and 4 of PB. It is noted from page no. 4 that

his son Shri Sudip Bhatia was controlling the assessee company (M/s Pushkar Trading & Holding Pvt. Ltd.) as director and at page no. 5 it is stated that his brother Satya Narayan Bhatia was also the director of the assessee company; and the Ld. A.R. drew our attention to page no. 9 wherein the answer to question no. 14 is given wherein Shri Subhash Chandra Bhatia has confirmed that the assessee company M/s Pushkar Trading & Holding Pvt. Ltd. is controlled by him through which accommodation entries in the form of unsecured loan has been provided to various beneficiaries/groups in lieu of the cash received from them; and he has admitted to have received a commission of Rs. 0.15 paisa for providing such accommodation entries. In view of this later developments, according to Ld. A.R., the Co-ordinate Bench of this Tribunal in the case of M/s Darshan Consultants Pvt. Ltd. vs. ITO in ITA No. 1947/Kol/2017 for AY 2012-13 dated 31.12.2018 and M/s Charishma Mercantiles Pvt. Ltd. vs. ITO in ITA No. 420/Kol/2020 for AY 2012-13 dated 12.10.2021, has set aside the appellate orders in those cases and remanded for de novo assessment in the light of the aforesaid/such developments.

3. After hearing both the parties we are not repeating the aforesaid facts for the sake of brevity. We note that there was a search on 3.1.2018 and Shri Subhash Chandra Bhatia's statement has been recorded u/s 132(4) of the Act on 5.1.2018 which is found placed at page nos. 1 to 16 of PB from which it is discerned that he has stated that his son/brother are directors of the assessee company and he is controlling the assessee company and managing the assessee company and is providing accommodation entry to beneficiaries in the form of unsecured loan in lieu of cash for a commission of Rs. 0.15 paisa. In the light of the aforesaid developments as well as taking note of the judicial precedents cited (supra) for the interest of justice and fair play we are of the opinion that the assessments need to be reframed afresh. Therefore we set aside the ex parte order of the Ld. CIT(A) and remit the matter back to the file of AO for de novo assessment. While framing the de novo assessment, the AO has to keep in mind the settled position of law that tax has to be assessed on the right person, and on right income, in the right assessment year. With this observation the AO is directed to reframe the assessment *de novo* in the light of search conducted on 03.01.2018 and the recorded statement as referred supra and other materials before him in accordance to law.

4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 2<sup>nd</sup> February, 2022.

Sd/-

(Rajesh Kumar)  
Accountant Member

Sd/-

(Aby. T. Varkey)  
Judicial Member

Dated: 02.02.2022

*SB, Sr. PS*

Copy of the order forwarded to:

1. Assessee – Pushkar Trading & Holding Pvt. Ltd., Room No. 301, Premises No. 4, Third Floor, Saklat Place Police Station, Bow Bazar, Kolkata-700072.
2. Revenue – ACIT(OSD), Ward-12(3), Kolkata
3. CIT(A)-4, Kolkata (sent through e-mail).
4. CIT, Kolkata.
5. DR, ITAT, Kolkata, (sent through e-mail)..

True Copy

By Order

Sr. Private Secretary/DDO  
ITAT, Kolkata Bench, Kolkata