

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A", KOLKATA**

**BEFORE SH. P.M.JAGTAP, VICE PRESIDENT &
SH.S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No.1127/KOL/2017
(ASSESSMENT YEAR-2007-08)**

M/s. Cascade Power Ltd., 10, Princep Street, 2 nd Floor, Kolkata-700072. PAN-AABCC2639R	vs	ITO, Ward-1(4), P-7, Chowringhee Square, Kolkata- 700069.
(Appellant)		(Respondent)
Appellant by	Sh.Miraj D.Shah, Ld.AR	
Respondent by	Sh.Sankar Halder, Addl. CIT, Sr.DR	
Date of Hearing	29.11.2018	
Date of Pronouncement	13.02.2019	

ORDER

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

This appeal filed by the assessee against the order dated 28.02.2017 passed by CIT(A)-9, Kolkata for AY 2007-08 u/s 147/143(3)/263/144 of the Income Tax Act, 1961 (in short "Act").

2. It is noted that no representation was made before the First Appellate Authority on behalf of the assessee and the grounds raised by the assessee in Form No.35 challenging the substantial addition of Rs.5,09,25,000 was added to the total income of the assessee on account of share application money vide order u/s 147/143(3)/263/144 of the Act. Ld. AR submits that the written submissions were filed before the CIT(A) which was forwarded to the AO for his report. The assessee did not receive any notice issued by the AO during the remand proceedings and the AO says the notice was served by affixture. Ld. AR prayed to remand the matter to the file of AO for the reason the AO completed the assessment proceedings without following direction given in 263 proceedings and passed order u/s 144 of the Act and prayed to remand the matter to the file of AO. Ld. DR opposed the same since there

was no appearance before the CIT(A) and the First Appellate Authority being having co-terminous powers with the AO and prayed to remand the matter to the file of CIT(A). It is noted from the record that the CIT(A) having exercising powers u/s 263 of the Act, held the assessment passed u/s 147 143 is erroneous and pre-judicial to the interest of the revenue and directed the AO to remand *denovo* assessment with directions as reflecting in page No. 2 of the assessment order. On perusal of the said order, it is noted that the AO issued summons u/s 131 of the Act but no such Directors representing the share subscribing companies appeared before the AO to prove their identity, creditworthiness and genuineness of the transactions. Therefore, it is clear that the assessment was completed without conducting inquiry as set out by the CIT(A) vide order u/s 263 of the Act. Therefore, we find force in the arguments of the Ld.AR that in remanding the matter to the file of AO for his fresh verification. Ld.AR also undertakes that the assessee shall co-operate in the proceedings. Therefore, the matter is remanded to the file of AO to conduct inquiries in pursuance of directions as set out by the CIT(A) u/s 263 of the Act vide its order dated 06.03.2013 which is reproduced hereunder:-

(i) "to pass the assessment order after conducting independent detailed and complete enquiries into the subscription to the share capital and premium to the extent of Rs.5,09,00,000/-introduced in this case.

(ii) to examine the source of share capital by enquiring into the various layers through which the money has been introduced in this assessee company as share capital and also examine the directors of subscriber companies.

(iii) to send information to the A.Os. having jurisdiction over the subscriber company, regarding its investment into share capital & premium paid.

(iv) to conduct independent enquires to verify the documents filed before him in respect of proof of subscription to share capital.

(v) not to confine himself to conducting enquiries into the subscribers to the share capital only on selective basis.

(vi) to call upon the assessee to identify the persons who are shown as directors of the assessee company and examine them on oath to verify their credential as directors.

(vii) to pass speaking order after providing reasonable opportunity to the assessee and verifying the source of share capital including the share

premium of all the subscribers and rotation of money through various hands so as to ascertain the true nature of transaction which will bring to the fore, the reality of the transactions.”

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

Order pronounced in the open court on 13.02.2019.

Sd/-

**(P.M.JAGTAP)
VICE PRESIDENT**

Sd/-

**(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER**

*Date:- 13.02.2019
*Amit Kumar**

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1. Appellant- M/s. Cascade Power Ltd., 10, Princep Street, 2nd Floor, Kolkata-700072.
2. Respondent- ITO, Ward-1(4), P-7, Chowringhee Square, Kolkata-700069.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

By order

**AR/H.O.O
ITAT, KOLKATA**