

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 3090/MUM/2022**  
**Assessment Year: 2007-08**

DCIT-3(4),  
29<sup>th</sup> floor, Centre-1,  
World Trade Centre,  
Cuffe Parade,  
Mumbai-400 005.

**Appellant**

**Vs.** M/s Union Bank of India (Erstwhile  
Corporation Bank)  
Central Accounts Dept. 6<sup>th</sup> floor,  
Union Bank Bhavan 239, Vidhan  
Bhavan Marg Nariman Point,  
Mumbai-400021.  
**PAN No. AAACU 0564 G**  
**(Erstwhile PAN No. AAACC7245E)**  
**Respondent**

**Assessee by** : Mr. S Ananthan/Ms. Lalitha  
**Revenue by** : Mr. Ankush Kapoor, CIT-DR

Date of Hearing : 09/11/2023  
Date of pronouncement : 21/11/2023

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the Revenue is directed against order dated 10.10.2022 passed by the Ld. Commissioner of Income-tax (Appeals)- National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2007-08, raising following grounds:

*1. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A), NFAC erred in holding the issue to be a mistake 'apparent from record' & setting aside the rejection of rectification application u/s 154 by the AO, by ignoring the fact that the issue involved IS debatable in nature and not a mistake apparent from record?*



*2. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A), NFAC erred in relying on the decision of Hon'ble Supreme Court in the case of Saurashtra Kutch Stock Exchange Ltd, ignoring the fact that the Issue is debatable, as the facts and circumstances of the present case is different to that of Vijaya Bank vs Commissioner on income Tax [civil appeal no. 3286-3287 of 2010] & Catholic Syrian Bank Ltd vs Commissioner Of Income Tax CIVIL APPEAL NO. 1143 OF 2011.*

*1. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A), NFAC was justified in directing the AO to delete the disallowance of bad debts amounting to Rs. 1619.82 crores pertaining to non-Rural bad debts claimed u/s 36(1)(vii) of the Act.*

*2. Whether the the Ld. CIT(A), NFAC was right in holding that the provisions of 36(1)(viii) of the Act do not apply to bad debts made by non rural branches particularly after insertion of explanation 2 to clause (viii) of subsection (1) of section 36 by the Finance Act 2013 with effect from 1 April 2014.*

2. At the outset before us, Ld. Counsel for the assessee filed an application under Rule 29 of the ITAT Rules raising the issue that Assessing Officer who passed the original assessment order is situated in Mangalore falling under the jurisdiction of the Karnataka High Court and therefore, in view of the decision of the Hon'ble Supreme Court in the case of ABC Papers Ltd. [2022] 447 ITR 1 (SC) the jurisdiction of the ITAT or the High Court would depend on the seat of the Assessing Officer who passed the said assessment order. He submitted that correct jurisdiction over the appeal lies before ITAT Bangalore Bench and this appeal is not maintainable before Mumbai Bench of ITAT. The Counsel for the assessee referred to the decision of the **Hon'ble Bombay High Court in the case of Peter Vaz v. CIT (2016) 436 ITR 616 (Bombay)** and submitted that assessee has raised a ground by way of application under Rule 27 of the Income-tax Appellate Tribunal Rules, 1963 (in short 'the Rules') which involve challenge of the



jurisdiction of the Assessing Officer in preferring this appeal, which goes to the root of the matter, therefore application under Rule 29 might be admitted. The Ld. Counsel further submitted that the decision of Hon'ble Supreme Court in ABC papers (supra) has been further followed by the Hon'ble Supreme Court in the case of MSPL Ltd. [2023] 454 ITR 280. Accordingly, the Ld. Counsel submitted that the Mumbai Bench of the Tribunal has no jurisdiction to hear the impugned appeal and the president ITAT does not have power to transfer this appeal to Bangalore Bench of ITAT in view of decision of Hon'ble Bombay High Court in the case of MSPL Ltd in the writ petition (L) No. 3865 of 2020, thus appeal need to be dismissed as non maintainable.

3. We have heard rival submission of the parties on the issue raised under Rule 29 of the ITAT Rules. In view of the decision of the Hon'ble Bombay Court in the case of Peter Vaz (supra) the ground raised in application under Rule 29 of the Rules is admitted.

3.1 We find that the Hon'ble Supreme Court in the case of **ABC Papers Ltd. (supra)** held *that appeal against every decision of the ITAT shall lie only before the High Court within whose jurisdiction the Assessing Officer passed the assessment order is situated, even if the case or the cases of assessee are transferred invoking power u/s 127 of the Act, the High Court within whose jurisdiction the Assessing Officer has passed the order, shall continue to exercise jurisdiction of the appeal and this principle is applicable even if the*



transfer is u/s 127 of the Act for same assessment year(s). The same principle lies for the filing appeal before the ITAT. In the case in hand, the Assistant Commissioner of Income-tax, Circle 2, Mangalore, has passed the assessment order, hence the appeal lies before the Bangalore Bench. Further, the **Hon'ble Bombay High Court in the case of MSPL Ltd. (supra)** held that the President of ITAT has *no power to transfer the appeals from Bench at one headquarter to bench at another headquarter*, and this appeal can't be transferred to Bangalore Bench .

3.2 In view of the above, we are of the opinion that the appeal of the Revenue is not maintainable in present form before the ITAT, Mumbai Bench. The Revenue is at liberty to approach the concerned Bench of the ITAT having jurisdiction over the Assessing Officer at Mangalore, if so advised. The period of limitation in filing the appeal shall accordingly be considered by the concerned Bench keeping in view the fact that ITAT Rules have been interpreted by the Hon'ble Bombay High Court recently, which has been further upheld by the Hon'ble Supreme Court in MSPL Ltd. (supra).

3.3 With the above observation the appeal of the Revenue is dismissed for statistical purposes as not maintainable.

**Order pronounced in the open Court on 21/11/2023.**

**Sd/-**  
**(KAVITHA RAJAGOPAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**



Mumbai;

Dated: 21/11/2023

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Mumbai**