

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 3652/MUM/2023
Assessment Year: 2012-13**

DCIT Circle-3(4),
R. No. 559, 5th floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Appellant

Vs.

Union Bank of India,
Central Accounts Dept. 6th floor,
Union Bank Bhavan 239, Vidhan
Bhavan Marg, Nariman Point,
Mumbai-400021.
PAN NO. AABCA 7375 C
Respondent

Assessee by : Mr. S Ananthan
Revenue by : Mr. Ankush Kapoor, CIT-DR

Date of Hearing : 25/04/2024
Date of pronouncement : 30/04/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the Revenue against order dated 14.08.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2012-13, raising following grounds:

1. (i) *"Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in holding that depreciation on investment*



viz. Available for Sale(AFS), Held for Trading (HFS) & Held to maturity (HTM) is allowable deduction"

(ii) "Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of depreciation on investment without verifying from the records of bank, the purpose for which they were purchased by the bank and its nature whether they are in nature of stock in trade or investments".

(iii) "Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of depreciation on investment without verifying whether entire investment are held to meet SLR purposes or not.

2. At the outset, the Ld. counsel for the assessee raised an issue that in this case impugned assessment order has been passed by the Assessing Officer located at Hyderabad and therefore, in view of the decision of the Hon'ble Supreme Court in the case of PCIT v. ABC Papers Ltd. 447 ITR 1 (SC), the appeal before ITAT should have been filed before the Hyderabad Bench of the Tribunal and not before the Mumbai Bench, therefore, same should be dismissed.

3. The Ld. Counsel for the assessee also relied on the decision of the Co-ordinate Bench of the Tribunal in the case of Union Bank of India(erstwhile corporation bank) in ITA No. 3090/M/2020 for assessment year 2007-08.

4. We have heard rival submission of the parties and perused the relevant material on record. In the case of Union Bank of India erstwhile corporation bank (supra), the Tribunal has dismissed the appeal of the Revenue with the liberty to approach the concerned bench of the ITAT having jurisdiction over the Assessing Officer. The relevant finding of the Tribunal is reproduced as under:



“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)."*

4.1 We may also note that the Hon'ble Supreme Court in the case of PCIT v. ABC Papers Ltd. (supra) has held the territorial jurisdiction of the Tribunal is determined by the situs of the Assessing Officer which in this appeal is Hyderabad and therefore, the present appeal filed by the Dy. Commissioner of Income-tax at Mumbai is not maintainable in present form. The Revenue is at liberty to file the appeal before the concerned bench of the ITAT having jurisdiction over the Assessing Officer at Hyderabad if so advised. The period of limitation in filing the appeal shall accordingly be considered by the Co-ordinate Bench. With the above observation the appeal of the Revenue is dismissed as not maintainable.

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 30/04/2024.

**Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

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

Mumbai;
Dated: 30/04/2024
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