IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.764 OF 2022

Atlas Copco India Ltd. ...Petitioner
Versus
Deputy Commissioner of Income Tax
Circle-8, Mumbai & Ors. ...Respondents

Mr. J. D. Mistri, Senior Advocate a/w Mr. Nilesh Joshi & Mr. Sameer Dalal for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K. R. SHRIRAM &
NEELA GOKHALE, JJ.
DATED : 23rd OCTOBER 2023

P.C. :

1 Petition is impugning an order dated 30th March 2021 passed by respondent no.2 rejecting petitioner's application under Section 264 of the Income Tax Act 1961 (the Act). Though, various grounds have been raised, the short point is petitioner's application under Section 264 of the Act was rejected without giving petitioner a personal hearing.

2 Indisputably, there was a delay in filing the application under Section 264 of the Act. Petitioner had filed an application for condonation of delay as well.

3 Petitioner received a notice dated 10th February 2021 by which, petitioner was informed that the hearing in the matter was fixed on 25th February 2021 at 11.00 a.m. and petitioner was requested to join in person or through an authorised representative. Petitioner was also asked to

submit the written submissions, if so desired. Petitioner filed the written submissions as well.

4 On 25th February 2021, when petitioner's representative appeared before respondent no.2, he was informed that the first part of the notice informing petitioner about the personal hearing and the date and time has been cancelled in the copy of the notice available in the record to respondent no.2, meaning thereby opportunity of personal hearing was not to be allowed. Copy of the notice where the first part stood cancelled was physically served on petitioner's representative. Respondent no.2 did not give a personal hearing but rather asked petitioner's representative to set out its case to his subordinate officer, i.e., ITO (HQ). It is alleged in the petition that ITO (HQ), in a perfunctory manner asked petitioner's representative to briefly touch on the case on merits. The entire discussion in the course of hearing before the ITO (HQ) centered around the merits of the claims. No indication was ever given with respect of question of rejecting the revision application as barred by limitation.

5 Thereafter, the impugned order dated 30th March 2021 came to be passed, in which, application under Section 264 has been dismissed only on the ground of delay. Mr. Mistri states that, therefore, the order was bad, in as much as, it is in breach of the principles of natural justice.

6 No reply has been filed though, petition was served in 2021. Therefore, we will proceed on the basis that the averments contained in

paragraph 14 of the petition as recorded above, has not been denied. Therefore, without going into the merits of the matter, we hereby quash and set aside the impugned order dated 30th March 2021.

7 Respondent no.2 may be advised that this court has time and again held that Section 264 confers wide jurisdiction on the Commissioner. The proceedings under Section 264 of the Act are intended to meet a situation faced by an aggrieved assessee, who is unable to approach the Appellate Authorities for relief and has no other alternate remedy available under the Act. The Commissioner is bound to apply his mind to the question whether petitioner was taxable on that income and his powers are not limited to correct the error committed by the subordinate authorities but could even be exercised where errors are committed by assessee. It would even cover situation where assessee because of an error has not put forth legitimate claim at the time of filing the return and the error is subsequently discovered and is raised for the first time in an application under Section 264 of the Act as held in ***Smita Rohit Gupta Vs. CIT***,[1]

8 The powers conferred under Section 264 of the Act being wide, respondent no.2 should have considered the application under Section 264 of the Act on merits. In any event, respondent no.2 should have given a personal hearing to petitioner to explain the delay and not direct petitioner to make its representation before the ITO(HQ). The ITO(HQ) was not the adjudicating authority before whom, the application under Section 264 of

1 . Judgment dated 28th August 2023 in Writ Petition No.6964 of 2022

the Act had been filed.

9 We have no hesitation in quashing and setting aside the impugned order dated 30th March 2021 and remand the matter to respondent no.2 for denovo consideration. Respondent no.2 shall dispose the application on merits. Before passing any order, personal hearing shall be given, notice whereof shall be given atleast five working days in advance. The order to be passed shall be a reasoned order dealing with all submissions of assessee. The application under Section 264 of the Act shall be disposed by 31st January 2024.

10 Petition disposed.

(NEELA GOKHALE, J.) **(K. R. SHRIRAM, J.)**