IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 378 OF 2026

GM Modular Private Limited .. Petitioner

Versus

Principal Commissioner of
Income Tax – 1 and Ors. .. Respondents

***Adv. Dharan V. Gandhi**, a/w Ms. Aanchal Vyas, for the Petitioner.*

***Adv. Sushma Nagaraj**, a/w Adv. Abhinav Palsikar, for the Respondent.*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.
DATE: MARCH 30, 2026

P. C.

1. Rule. Respondents waive service. With the consent of the parties, Rule is made returnable forthwith and heard finally.

2. By this Writ Petition, filed under Article 226 of the Constitution of India, the Petitioner challenges the order dated 20.03.2025 passed by Respondent No. 1 under Section 264 of the Income-tax Act, 1961 (for short "**IT Act**"), which summarily rejected the revision application filed by the Petitioner. The Petitioner also challenges the penalty order dated 29.01.2024

passed by Respondent No. 2 under Section 270A of the Act for the Assessment Year (for short "**AY**") 2019-20.

3. The facts as narrated in the petition are as follows:

a) The Petitioner filed its return of income for AY 2019-20, declaring a total income of Rs. 70,11,00,620/-.

b) The said return was processed under Section 143(1) of the IT Act, wherein an adjustment/disallowance of Rs. 26,72,885/- was made on account of the delayed payment of employees' contribution to Provident Fund (PF) and Employee State Insurance (ESI), under Section 36(1)(va) of the Act. This was vide an intimation dated 08.05.2020.

c) Subsequently, a search and seizure action under Section 132 of the IT Act was conducted, and an assessment order under Section 143(3) read with Section 153A of the IT Act was passed on 17.08.2021. In this assessment order, the Assessing Officer merely reiterated the disallowance of Rs. 26,72,885/- under Section 36(1)(va) of the IT Act, which was already made in the intimation issued under Section 143(1) of the IT Act, alongside other additions.

d) While the Commissioner of Income Tax (Appeals) deleted the addition of Rs. 26,72,885/- under Section 36(1)(va) of the IT Act, the Income Tax Appellate Tribunal (for short "**ITAT**"), vide order dated 31.05.2023, confirmed the disallowance of Rs. 26,72,885/- relying on the judgment of the Hon'ble Supreme Court in the case of ***Checkmate Services Pvt. Ltd vs. CIT reported in [2022] 448 ITR 518 (SC)***.

e) Insofar as the other additions are concerned, it is not disputed that the same were either deleted or set aside by Respondent No. 2. No penalty on such other additions was levied in the impugned penalty order.

f) Consequent to the ITAT order, Respondent No. 2 passed a penalty order dated 29.01.2024 under Section 270A of the IT Act, levying a penalty of Rs. 4,67,006/- for alleged under-reporting of income. As mentioned earlier, this was only in respect of disallowance under Section 36(1)(va) of the IT Act.

g) Aggrieved by the penalty order, the Petitioner filed a revision application under Section 264 of the IT Act before Respondent No. 1. However, vide the impugned order dated 20.03.2025, Respondent No. 1 simply rejected the application, holding that the issue was not fit for

revisionary proceedings, without assigning any reasons. Hence, the present Petition.

4. In this factual backdrop, Mr. Gandhi, learned Counsel appearing on behalf of the Petitioner, submitted as follows:

a) Respondent No. 1 completely failed to exercise the wide discretion and jurisdiction vested in him under Section 264 of the IT Act. He submitted that it is well settled that the powers of the Commissioner of Income-tax under Section 264 are very wide and certainly the issue under consideration could have been dealt with by Respondent No. 1.

b) On merits, he contended that no penalty could be levied since the claim for deduction was based on the favorable decision of the jurisdictional Bombay High Court in the case of ***CIT vs. Ghatge Patil Transports Ltd. reported in (2014) 368 ITR 749(Bom)***, which was the binding law as on the date of filing the return of income. Therefore, once a claim is made relying upon the decision of the Jurisdictional High Court, then the same cannot be a subject matter of penalty, if subsequently, the decision of the Jurisdictional High Court is reversed by the Hon'ble Supreme Court.

c) In any event, in light of divergent views of various High Courts, the issue, at best, is a debatable issue and cannot therefore be an issue for visiting the Assessee with a penalty. Even as late as on 27.01.2026, the Hon'ble Supreme Court in ***Woodland (Aero Club) Private Limited vs. ACIT in SLP(C) No. 1532 of 2026***, has again decided to revisit this issue. This clearly shows that the issue is a debatable.

d) He further pointed out that the adjustment for the PF/ESI disallowance was already made while processing the return under Section 143(1)(a) of the IT Act. Therefore, as per the computation mechanism under Section 270A(2)(a) read with Section 270A(3) of the IT Act, there is no "under-reported income" because the assessed income does not exceed the income determined in the intimation under Section 143(1)(a).

e) Lastly, he argued that the Petitioner's case is squarely covered by the exception under Section 270A(6)(a) of the IT Act, as all material facts were fully disclosed and the explanation offered was *bona fide*. He emphasised that merely because an addition is made or sustained, it does not mean that penalty is inevitable.

f) In support of his contentions, he relied upon the following decisions in the cases of ***CIT v. Reliance Petroproducts (P.) Ltd. – [2010] 322 ITR 158 (SC), CIT v. Gurdaspur Co-operative Sugar Mills Ltd.- [2024] 461 ITR 208 (SC), CIT v. Gurdaspur Co-operative Sugar Mills Ltd. – [2013] 354 ITR 27 (Punj. & Har.), CIT v. Nayan Builders & Developers - [2014] 368 ITR 722 (Bombay), Dilip N. Shroff vs. JCIT in [2007] 291 ITR 519 (SC) and K. Krishnamurthy vs. DCIT in [2025] 473 ITR 557 (SC)***.

5. Per contra, Ms. Nagaraj, the learned Counsel for the Respondents, relying on the affidavit-in-reply, vehemently opposed the petition. She argued that the Petitioner cannot bypass the statutory appellate remedy available under Section 246A of the IT Act by invoking the revisionary jurisdiction under Section 264. She submitted that Section 264 cannot be invoked when an order is an appealable order. It was further contended that since the Hon'ble Supreme Court in *Checkmate Services Pvt. Ltd. (supra)* has conclusively decided the issue in favour of the Revenue, the law applies retrospectively, and therefore, the penalty for under-reporting of income has to be mandatorily levied. It was therefore contended that

Respondent No. 1 rightly declined to interfere in a matter where the quantum addition had attained finality from the ITAT.

6. In rejoinder, Mr. Gandhi submitted that this argument of maintainability of the Revision Application under Section 264 of the Act and bypassing of appellate remedy has been repeatedly repelled by this Court. In this regard, he relied upon a recent decision of this Court in the case of ***Swaminarayan Mandir Trust v. Commissioner of Income-tax (Exemptions) reported in [2026] 182 taxmann.com 209 (Bombay)*** to support his contention.

7. We have heard the learned counsel for the parties and perused the material on record.

8. We shall first deal with the preliminary objection raised by the Department regarding the maintainability of the Revision Application under Section 264 of the IT Act. Relevant extract of Section 264 of the IT Act is reproduced hereunder:

> *"264. (1) In the case of any order other than an order to which section 263 applies passed by an authority subordinate to him, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which any such*

order has been passed and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.

...

(4) The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner shall not revise any order under this section in the following cases—

(a) where an appeal against the order lies to the Deputy Commissioner (Appeals) or to the Joint Commissioner (Appeals) o] the Commissioner (Appeals) or to the Appellate Tribunal but has not been made and the time within which such appeal may be made has not expired, or, in the case of an appeal to the Joint Commissioner (Appeals) or the Commissioner (Appeals) or to the Appellate Tribunal, the assessee has not waived his right of appeal; or

(b) where the order is pending on an appeal before the Deputy Commissioner (Appeals); or

(c) where the order has been made the subject of an appeal to the Joint Commissioner (Appeals) or the Commissioner (Appeals) or to the Appellate Tribunal."

9. The provisions of Section 264 are wide enough to include "any order" passed by an authority subordinate to the Principal Commissioner. The penalty order passed under Section 270A of the IT Act is an order passed under the Act, and therefore, the same can be revised under Section 264 of the Act. Further, the legislature itself, under Section 264(4) of the IT Act, has specified the circumstances under which the revisional power cannot be exercised. Section 264(4)(a) provides that an order against which an appeal

lies before the Commissioner (Appeals) or Joint Commissioner (Appeals), and where the time limit to file such an appeal has not expired, then such an order cannot be revised under Section 264 of the IT Act. However, in such a scenario, if the Assessee waives his right to file an appeal, then such an order can be the subject matter of revision under Section 264 of the IT Act. Further, Sections 264(4)(b) and 264(4)(c) provide that an order cannot be revised under Section 264 of the IT Act if an appeal against such order is filed and is pending before the Commissioner (Appeals), Joint Commissioner (Appeals) or the Appellate Tribunal. Thus, it is only in a case where either an appeal is already preferred before the first appellate authority and is pending or in a case where the time limit to file an appeal has not expired, and the Assessee does not waive his right to appeal, that the jurisdiction under Section 264 cannot be exercised. A plain reading of Section 264(4) will show that only in the circumstances mentioned in clauses (a), (b) or (c) of the said Section that the revisional jurisdiction cannot be exercised. Other than the said exceptions, in all other cases, an order, even it may be an appealable order, can be revised under Section 264 of the IT Act.

10. The upshot of the above discussion is that there is no statutory mandate compelling an Assessee to file an appeals. The Assessee has the right to choose its remedy and can opt either for a revision under Section 264 or an

appeal under Section 246A. This issue is no longer *res integra*. In the case of *Swaminarayan Mandir Trust (supra)*, this Court held as under:

> *"16. Firstly, we are in agreement with the submission made by Mr. Jain that the assessee has the discretion to either file an appeal under the provisions of Section 246A of the IT Act before the Commissioner of Income tax (Appeals) against an appealable order or to apply for revision under Section 264 of the IT Act before the prescribed authorities. There is nothing in the statute which mandates the assessee only to pursue the appeal remedy and deny the remedy under Section 264 (when no such appeal is filed). In fact, this Court in the case of Kamal Pasricha As Trustee of Kuldip Kaur Trust v. ITO [2025] 171 taxmann.com 620 (Bombay) dated 10-02-2025] and Aafreen Fatima Fazal Abbas Sayed v. Asstt. CIT [2021] 127 taxmann.com 819 (Bombay)/[2021] 280 Taxman 429 (Bombay)/[2021] 434 ITR 504 (Bombay) has consistently held that the Revisional Authority under Section 264 cannot refuse to exercise its revisional jurisdiction on the ground that order impugned was appealable before the appellate authority."*

11. Having held that the order under Section 270A of the IT Act could be revised under Section 264 of the IT Act, we find that Respondent No. 1 erred in not exercising the discretion vested in him under Section 264 of the IT Act. It is consistently held by this Court that the powers conferred under Section 264 are very wide. Section 264(1) empowers the Commissioner to pass such order as he thinks fit. Such order, of course, cannot be prejudicial to the Assessee. Thus, the powers of the Commissioner are expressed in very wide terms. Respondent No. 1 was duty-bound to examine the merits of the penalty levied. This Court in ***Pramod R. Agrawal v.***

Principal Commissioner of Income-tax [2023] 156 taxmann.com 126 (Bombay), has held in paragraph 11 as under:

> *"11. The other submission of Mr. Suresh Kumar also cannot be accepted in view of the wide powers conferred on respondent No. 1 under section 264 of the Act. As held by this court in Smita Rohit Gupta (supra), 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…" (emphasis supplied)*

12. Having held that the impugned order under Section 264 is unsustainable, ordinarily, we would have remanded the matter back to Respondent No. 1. However, considering the facts of the case and to prevent further protraction of litigation, we deem it appropriate to decide the issue of the penalty on merits here itself, as we are of the considered view that penalty could not have been levied in the present case.

13. Firstly, a plain reading of Section 270A(1) of the Act indicates that the Assessing Officer "may" direct that a person shall be liable to pay a penalty. The use of the word "may" clearly shows that the levy of penalty is

discretionary and not mandatory. It is a well-settled principle of law that penalty is not an inevitable consequence in every case where an addition is made. The Hon'ble Apex Court in the case of *Dilip N. Shroff (supra)*, while dealing the predecessor of Section 270A i.e., while dealing with Section 271(1)(c) of the Act, has held that:

> *"37. The legal history of section 271(1)(c) of the Act traced from the 1922 Act prima facie shows that Explanations were applicable to both the parts. However, each case must be considered on its own facts. The role of Explanation having regard to the principle of statutory interpretation must be borne in mind before interpreting the aforementioned provisions. Clause (c) of sub-section (1) of section 271 categorically states that the penalty would be leviable if the assessee conceals the particulars of his income or furnishes inaccurate particulars thereof. By reason of such concealment or furnishing of inaccurate particulars alone, the assessee does not ipso facto become liable for penalty. Imposition of penalty is not automatic. Levy of penalty not only is discretionary in nature but such discretion is required to be exercised on the part of the Assessing Officer keeping the relevant factors in mind. Some of those factors apart from being inherent in the nature of penalty proceedings as has been noticed in some of the decisions of this Court, inheres on the face of the statutory provisions. Penalty proceedings are not to be initiated, as has been noticed by the Wanchoo Committee, only to harass the assessee. The approach of the Assessing Officer in this behalf must be fair and objective."*
>
> *(emphasis supplied)*

14. Very recently, the Hon'ble Supreme Court in the case of *K. Krishnamurthy (supra)*, in the context of Section 271AAA of the IT Act, has, in paragraphs 30 and 31, held thus:

> *"30. This Court is of the view that Section 271AAA(1) of the Act 1961 stipulates that the Assessing Officer may, notwithstanding anything contained in any other provisions of the Act 1961, direct the Assessee, in a case where search has been carried out to pay by way of a penalty, in addition to the tax, a sum computed at the rate of 10% (Ten per cent) of the undisclosed income of the specified previous year. However, the imposition of penalty is not mandatory. Consequently, penalty under this Section may be levied if there is undisclosed income in the specified previous year.*
>
> *31. This Court is of the view that though under Section 271AAA(1) of the Act 1961, the Assessing Officer has the discretion to levy penalty, yet this discretionary power is not unfettered, unbridled and uncanalised. Discretion means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful. [See: Som Raj v. State of Haryana (1990) 2 SCC 653]."*
>
> *(emphasis supplied)*

15. Secondly, we find merit in the Petitioner's submission that in the present case, there is no under-reporting of income. The adjustment/disallowance regarding the employees' contribution to PF/ESI was already made by the Centralised Processing Centre (CPC) while processing the return under Section 143(1)(a) of the IT Act. An intimation issued under Section 143(1)(a) of the Act dated 08.05.2020 is placed on record. On perusal of the same, it can be seen that against the returned income of Rs. 70,11,00,620/-, the income determined is of Rs. 70,37,73,510/- after adding a sum of Rs. 26,72,885/-, which was on account of disallowance under Section 36(1)(va) of the Act. Further, the same addition was reiterated

in the Assessment Order dated 17.08.2021, the relevant paragraph of which is as under:

> *"2.CPC while processing of return of Income of assesse for A.Y.-2019-20, had disallowed an amount of Rs. 26,72,885/- on account of employee's contribution in respect of provident fund. The said disallowance is hereby made and added to the total income of the assesse. Penalty proceedings u/s 270A of the Income Tax Act is initiated for under reporting of Income."*

16. Relevant extract of Section 270A(2) is reproduced hereunder:

> *"(2) A person shall be considered to have under-reported his income, if—*
>
> *(a) the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143;"*

17. Thus, Section 270A(2)(a) provides that a person shall be considered to have under-reported his income if the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of Section 143. It is undisputed that in the present case, other clauses of Section 270A(2) of the Act do not apply.

18. Further, relevant extract of Section 270A(3) stipulates that:

> *"(3) The amount of under-reported income shall be,—*
>
> *(i) in a case where income has been assessed for the first time,—*

(a) if return has been furnished, the difference between the amount of income assessed and the amount of income determined under clause (a) of sub-section (1) of section 143;"

19. Thus, Section 270A(3)(i)(a) quantifies the under-reported income as the difference between the amount of income assessed and the amount of income determined under Section 143(1)(a). It is undisputed that in the present case, other clauses of Section 270A(3) of the IT Act do not apply

20. The present case does not fall within the ambit of the above-referred provisions. As noted earlier, Respondent No. 2 in the assessment order passed under Section 143(3) read with Section 153A merely reiterated the addition that was already made in the Section 143(1)(a) intimation. Therefore, the assessed income qua this specific addition does not exceed the processed income. Consequently, the mandatory ingredients for invoking a penalty for under-reporting of income under Section 270A(2) and (3) are not satisfied. Therefore, this addition cannot be considered to be under-reported income and therefore, on this ground alone, the penalty imposed has to be deleted.

21. Thirdly, the issue of disallowance under Section 36(1)(va) of the IT Act was settled in favour of the Petitioner at the time the Petitioner filed its return of income. The Petitioner's claim was supported by a binding decision

of this Court (Jurisdictional High Court) in the case of *Ghatge Patil Transports Ltd (supra)*. It was only subsequently that the Hon'ble Supreme Court settled the position of law in *Checkmate Services Pvt. Ltd. (supra)* and reversed the view taken by this Court. When a claim is made relying upon a binding judicial precedent, then certainly such an issue cannot invite any penal consequences, just because the view was subsequently reversed.

22. Moreover, it is a well-established legal principle that no penalty can be levied on a debatable issue or where a claim is made based on the prevailing law of the land at the relevant time. In this regard reference can be first made to the decision of the Punjab and Haryana High Court in the case of ***CIT vs. Gurdaspur Co-operative Sugar Mills Ltd. (supra)***. In paragraphs 4 and 5, the Court held as under:

> *"4. In the present case, there is no dispute about the quantum of receipt of grant-in-aid from the State Government. The assessee reflected the same as capital receipt, whereas it has been treated as to be revenue receipt. The issue whether the amount of grant-in-aid is capital receipt or a revenue receipt, is a debatable issue. The findings returned in the judgment relied upon is on fact of non-furnishing of details of expenses. The issue was not debatable as in the present case. Therefore, the reliance on the Division Bench judgment is misconceived.*
>
> *5. In view of the above, we do not find any error in the findings recorded by the Tribunal while setting aside the penalty. Consequently, we do not find that the order of the Tribunal gives rise to any substantial question of law for the opinion of this court."*

23. When the above matter was carried to the Hon'ble Supreme Court in *CIT vs. Gurdaspur Cooperative Sugar Mills (P.) Ltd. (supra)*, the Revenue categorically held that the correct position in law has been stated by the High Court. The relevant paragraph in this regard is as under:

> *"1. Mr. N Venkatraman, learned Additional Solicitor General, has in his usual fairness stated the correct position of law as it exists in the facts and circumstances of the case. Taking note of the legal position, the Special Leave Petitions are dismissed."*

24. Lastly, this Court in *CIT v. Nayan Builders & Developers (supra)* has held thus:

> *"1. Having heard Mr Ahuja, learned counsel appearing on behalf of the appellant, we find that this appeal cannot be entertained as it does not raise any substantial question of law. The imposition of penalty was found not to be justified and the appeal was allowed. As a proof that the penalty was debatable and arguable issue, the Tribunal referred to the order on the assessee's appeal in quantum proceedings and the substantial questions of law which have been framed therein. We have also perused that order dated September 27, 2010, admitting Income Tax Appeal No. 2368 of 2009. In our view, there was no case made out for imposition of penalty and the same was rightly set aside. The appeal raises no substantial question of law, it is dismissed."(emphasis supplied)*

25. Thus, it is a settled position in law that when an issue is debatable, no penalty cannot be imposed. The issue under consideration is certainly debatable, as different High Courts had taken different views. Moreover, as shown by Mr. Gandhi, even as late as on 27.01.2026, the Hon'ble Supreme Court in ***Woodland (Aero Club) Private Limited vs.***

ACIT in SLP(C) No. 1532 of 2026, has again decided to revisit this issue. This itself shows that the issue is debatable. In such a scenario, penalty cannot be levied. This is another reason for us to interfere.

26. Lastly, the Petitioner's case is squarely covered by the exception provided under Section 270A(6)(a) of the IT Act. The same reads thus:

> *"(6) The under-reported income, for the purposes of this section, shall not include the following, namely:—*
>
> *(a) the amount of income in respect of which the assessee offers an explanation and the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered;"*

27. In the above context, it is very pertinent to note that the Petitioner had disclosed all material facts in its return of income and the tax audit report. The claim was made under a *bonafide* belief supported by a jurisdictional High Court precedent. Thus, the Petitioner had offered an explanation and such explanation was *bonafide*. In such a case, it cannot be considered to be an under-reported income. In this regard, one can profitably refer to the felicitous findings of the Hon'ble Supreme Court in *CIT v. Reliance Petroproducts (P.) Ltd. (supra)*. The Supreme Court in that case held that the mere making of a claim which is not sustainable in law does not

amount to furnishing inaccurate particulars. Relevant paragraphs in this regard are as under:

> *"9. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as :—*
>
> *"not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript."*
>
> *We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars.*
>
> *10. It was tried to be suggested that section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of*

> *particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that by itself would not, in our opinion, attract the penalty under section 271(1)(c). If we accept the contention of the revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature."*
>
> *(emphasis supplied)*

28. Although this decision was rendered in the context of Section 271(1)(c) of the IT Act, the underlying principle that a *bonafide* claim fully disclosed in the return does not warrant penal consequences applies with equal force to the exceptions carved out under Section 270A(6)(a) of the IT Act. Therefore, even by this logic, the penalty levied by Respondent No. 2 in the present case has to be set aside.

29. In view of the foregoing discussion, the Writ Petition is allowed. The impugned order dated 20.03.2025 passed by Respondent No. 1 under Section 264 of the IT Act, as well as the penalty order dated 29.01.2024 passed by Respondent No. 2 under Section 270A of the IT Act, are hereby quashed and set aside.

30. Rule is made absolute in the above terms and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

31. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.] **[B. P. COLABAWALLA, J.]**

Darshan Patil