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

WRIT PETITION NO. 2604 OF 2026

GIA India Laboratory Pvt. Ltd. ... **Petitioner**

V/s.

The Assessment Unit, Income Tax Department,
National Faceless Assessment Centre,
New Delhi & Ors. ... **Respondents**

Mr. J.D. Mistri, Senior Advocate a/w. Mr. Gunjan Kakad i/b. Atul K. Jasani for the Petitioner
Mr. Akhileshwar Sharma (through V.C.) for the Respondents

CORAM : B.P. COLABAWALLA AND
FARHAN P. DUBASH, JJ.

DATE : 9th SEPTEMBER 2026

P.C. :

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

2. This Petition challenges an order dated 28th March 2025, passed by Assessment Unit, Income Tax Department, under Section 270A of the Income-tax Act, 1961 ("**the Act**") for the Assessment Year (AY) 2020-21 levying a penalty of Rs.47,88,81,423/- on the Petitioner, which was

subsequently reduced to Rs. 35,11,79,712/- by an order dated 21st August, 2026 passed under Section 154 read with Section 270A of the Act. The Petitioner submits that the penalty has been levied on account of the following three additions and disallowances made in the final Assessment Order dated 16th July 2024:

(a) *A transfer pricing adjustment of Rs. 66,96,52,179/- in respect of royalty paid by the Petitioner to Gemological Institute of America, Inc. ("GIA US")*

(b) *Disallowance of deduction of Rs. 4,18,81,000/- claimed by the Petitioner under section 80G of the Act in respect of its contribution to Corporate Social Responsibility ("CSR") activities.*

(c) *Disallowance of deduction of education cess of Rs. 2,03,60,933/-.*

3. As per the Petitioner, it is an Indian company engaged in the business of grading diamonds, coloured stones, gems, pearls and other precious stones. GIA US is an associated enterprise of the Petitioner. GIA US has created intangible property such as trademarks, slogans, proprietary gemstone grading knowledge, process know-how, database management systems, proprietary equipment, standard reports, training material and process for graders. For providing diamond grading services to its clients, the Petitioner uses the intangible property developed and owned by GIA US and pays a royalty to GIA US. During the previous year relevant to A.Y. 2020-21, the Petitioner paid royalty of Rs. 378,49,90,577/- to GIA US. The Petitioner

also incurred expenditure of Rs. 8,37,62,000/- on account of CSR activities and also had claimed a deduction of education cess paid of Rs. 2,03,60,933/- in the Return of Income.

4. The Petitioner filed its Return of Income for A.Y. 2020-21 on 13th February 2021 claiming a deduction of Rs. 378,49,90,577/- on account of royalty paid to GIA US. The amount of royalty was computed at 65% of the operating profits of the India Graded Segment of the Petitioner. The said royalty was disclosed in the Return of Income and in Form No. 3CEB, which is the prescribed form for reporting international transactions entered into by an Assessee with its associated enterprises.

5. Earlier, for the determination of the Arm's Length Rate of royalty, the Petitioner had entered into an Advance Pricing Agreement ("**APA**") dated 7th May 2018 with the Central Board of Direct Taxes ("**CBDT**") under Section 92CC of the Act for A.Y. 2010-11 to A.Y. 2018-19, wherein the Arm's Length Rate of royalty was agreed to be 53.50% of the operating profit of the India Graded Segment of the Petitioner.

6. The Petitioner applied for renewal of the APA on 28th March 2018. In view of the significant investment in technology by GIA US and other increased technological benefits offered to the Petitioner, the Petitioner claimed that

the Arm's Length Rate of royalty should be 65% of the operating profits of the India Graded Segment. Pending the finalisation of the APA for the renewal period of A.Y. 2019-20 to A.Y. 2023-24, the Petitioner paid royalty of Rs. 378,49,90,577/- to GIA US at 65% [of the Operating Profit of the India Graded Segment] in respect of the year ended 31st March 2020 and claimed a deduction thereof in the Return of Income for A.Y. 2020-21. The Petitioner also claimed deduction of Rs. 4,18,81,000/- under Section 80G of the Act being 50% of the CSR expenditure expended during the year under consideration totalling to Rs. 8,37,62,000/-. Apart from this, the Petitioner also claimed a deduction for Education Cess of Rs. 2,03,60,933/- relying on the decision of this Court in the case of ***Sesa Goa Ltd. vs. JCIT [(2020)117 taxmann.com 96]***, wherein this Court held that Education Cess and Higher Secondary Education Cess are eligible for deduction in computing income chargeable under head of 'profits and gains of business or profession'. Subsequently, the Finance Act, 2022 introduced Explanation 3 in Section 40(a)(ii) of the Act with retrospective effect from 1st April 2005, providing that the term "tax" shall include and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax. This explanation was inserted after the return was filed by the Petitioner on 13th February 2021.

7. Be that as it may, the Petitioner's case was selected for scrutiny and a reference was made to the Transfer Pricing Officer (**"TPO"**) under Section 92CA(3) for determination of Arm's Length Price of the international transactions entered into by the Petitioner with its associated enterprises, including the transaction of payment of royalty by the Petitioner to GIA US. The TPO in his order dated 19th July 2023 did not accept the claim of the Petitioner for the payment of royalty at the higher rate of 65% and held that the Arm's Length Rate of royalty should be restricted to 53.50% as per the earlier APA, as application for renewal of APA was pending. Accordingly, he proposed an adjustment of Rs. 66,96,52,179/-.

8. Keeping in mind the recommendations of the TPO, the Assessing Officer passed a draft Assessment Order dated 25th September 2023, wherein he made an addition of Rs. 66,96,52,179/-. Apart from this, in the Draft Assessment Order, the Assessing Officer also disallowed deduction under Section 80G in respect of the CSR expenditure by relying on Explanation 2 to Section 37(2) of the Act which denies deduction of CSR expenditure in computing income under the head "profits and gains of business or profession". During the course of the assessment proceedings, the Petitioner disclaimed deduction in respect of Education Cess in view of the

retrospective amendment to Section 40(a)(ii) of the Act and, accordingly, the said claim was also disallowed in the draft Assessment Order. These additions were confirmed by DRP in its directions dated 12th June 2024 and the Assessing Officer passed the final Assessment Order dated 16th July 2024 making the aforesaid additions.

9. The Petitioner filed an Appeal to the Tribunal against the final Assessment Order challenging the transfer pricing adjustment to royalty and the denial of deduction under Section 80G of the Act. During the pendency of the Appeal, the renewal application of the Petitioner was finalised and the APA was signed on 27th March 2025, wherein the Arm's Length Rate of the royalty was finally settled at 53.50%. Pursuant to this, the Petitioner filed a modified Return of Income under Section 92CD of the Act on 30th June 2025. The Tribunal *vide* its order dated 21st November 2025 noted that the APA had been signed and that the Petitioner had filed a modified return pursuant to the APA offering a higher income, and accordingly, directed the Assessing Officer to give effect to the APA. The Tribunal also allowed the deduction under Section 80G of the Act.

10. As noted earlier, the APA was signed on 27th March 2025. Mr. Mistri, learned Senior Advocate appearing for the Petitioner, on instructions further

states that the critical assumptions in the APA, and more particularly the raising of an invoice by the Petitioner and realization of the invoice amount within 90 days has been complied with and an amount of Rs.66,36,95,028/- has been received by the Petitioner from GIA US on 11th June 2025 [difference being on account of unrelated minor adjustments as per the APA]. Mr. Mistri, in response to our query, stated that the modified Return of Income was filed by the Petitioner pursuant to the APA on 30th June 2025 as required under Section 92CD(1) of the Act. However, till date, the Assessing Officer has not passed an order either giving effect to the Tribunal's order dated 21st November 2025 or to the modified Return of Income. He took us through the provisions of Sections 92CC and 92CD of the Act wherein the scheme of APA is encompassed and submitted that, once an APA is signed and a modified return is filed pursuant thereto, the Assessing Officer has to pass an order modifying the total income having regard to the APA. When we enquired with Mr. Sharma, the learned Counsel appearing for the Respondents as to why the Assessing Officer has not yet given effect to the order passed by the Tribunal, or passed an order on the modified return filed by the Petitioner pursuant to the APA, Mr. Sharma pointed out that, in view of Section 92CD(5) of the Act, the Assessing Officer has to pass an order under Section 92CD(3) within a period of one year from the end of the Financial Year in which the modified return under sub-Section (1) is furnished and, therefore, the Assessing Officer has time upto 31st March 2027 to pass the order on the Petitioner's modified return. Mr. Mistri, in Rejoinder, submitted that the time to pass the Order Giving Effect (OGE) to the Tribunal's order as per Section 153(5) of the Act is three months from the end of the month in which the Tribunal's order is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and, therefore, the Assessing Officer was required to pass an order within such time. He submitted that, in any event, the impugned penalty order, which was passed without taking into account the APA, the modified return or the Tribunal's order, cannot survive and must be quashed. Insofar as the penalty referable to the deduction under Section 80G is concerned, Mr. Mistri submitted that the Tribunal in a number of cases has held that the deduction under Section 80G cannot be denied to CSR expenditure and relied on the decision of the Tribunal in the Petitioner's own case for A.Y. 2020-21, albeit rendered subsequently. Insofar as the issue of education cess is concerned, he relied on the decision of this Court in ***Sesa Goa's*** case *(supra)*. Mr. Mistri fairly pointed out that subsequently, in ***JCIT vs. Sesa Goa Ltd. [(2023) 155 taxmann.com 342 (SC)]***, based on a concession given by the Assessee therein in view of the subsequent amendments in the Act, the decision of this Court was set aside by the Hon'ble Supreme Court and the Appeal against it was allowed. However, he submitted that at the time when the return was filed and claim was made, the decision of this Court held the field and making a claim by relying on it can never be regarded as under-reporting of income in consequence of misreporting of income and, therefore, the provisions of Section 270A cannot be attracted on these facts. In this regard, he relied on the decision of this Court in the case of ***GM Modular (P.) Ltd. vs. PCIT [(2026) 185 taxmann.com 495]*** wherein at para 21, it was held thus:

> *"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."*

11. Mr. Mistri, the learned Counsel for the Petitioner, accordingly, submitted that none of the issues raised in the impugned order justified a levy of penalty. He submitted that the entire scheme of the APA, which seeks to reduce litigation will be rendered ineffective and irrelevant if the Officer is permitted to levy penalty on a claim or a position settled in the APA. Primarily on this ground, the jurisdiction of Respondent No. 1 to levy penalty was challenged. He submitted that the issue of allow-ability of a

deduction under Section 80G of the Act in respect of CSR expenditure is well settled and supported by umpteen number of decisions of the Tribunal, which are binding on the Assessing Officer and, therefore, he had no jurisdiction to make the said disallowance and consequently levy penalty. He submitted that the Assessing Officer had no jurisdiction to levy penalty on account of deduction disclaimed by the Petitioner when the claim was originally made relying upon a decision of this Court and thereafter given up on account of a subsequent retrospective amendment. The Petitioner has filed an Appeal against the said penalty order out of abundant caution with a view to save limitation and, without prejudice to the rights and contentions raised in this Petition. Mr. Mistri states that if this Petition is allowed, the Appeal will be withdrawn within a period of two weeks.

12. *Per contra*, Mr. Sharma, submitted that for A.Y. 2010-11 to A.Y. 2018-19, the Petitioner, despite paying higher rate of royalty finally agreed in the APA that the Arm's Length Rate of royalty would be 53.50% of the operating profit of the India Graded Segment of the Petitioner. Pending the finalisation of a fresh APA post A.Y. 2018-19, there was no justification for the Petitioner to pay royalty to GIA US at 65% in respect of the year ended 31st March 2020 and claim a deduction thereof in the Return of

Income for A.Y. 2020-21. The APA under Section 92CC for AY 2019-20 to 2023-24 was executed between the CBDT and the Petitioner on 27th March 2025 at New Delhi. The Assessment Unit, being aware of the APA having been executed on the previous day passed the impugned order on 28th March 2025. No ill motive can be attributed upon the Assessment Unit for passing the impugned order. The Petitioner having filed a modified return, the Assessing Officer will pass an order modifying the total income of the Petitioner having regard to and in accordance with the APA. Thereafter, the penalty order could be rectified on the issue of royalty.

13. Mr. Sharma further submitted that the Petitioner, fully aware that the merits of the penalty order can be adjudicated in Appeal, has already filed, an Appeal against the impugned order. He submits that the Writ Court may examine the decision making process and pass appropriate directions. However, the merits of the penalty order on the issue of disallowance of deduction of Rs.4,18,81,000/- claimed by the Petitioner under Section 80G of the Act in respect of its contribution to Corporate Social Responsibility (**"CSR"**) activities and the disallowance of deduction of education cess of Rs.2,03,60,933/- may be left to be decided by the Appellate Authority.

14. We have heard the Learned Counsel for the parties and have also perused

the papers and proceedings in the above Writ Petition. From the record we find that penalty under Section 270A of the Act has been levied on account of three issues, namely, (1) transfer pricing adjustment of Rs. 66,96,52,179/- in respect of the payment of royalty to GIA US; (2) disallowance of deduction under Section 80G of the Act in respect of CSR expenditure and (3) disallowance of Education Cess. We will deal with issues (2) and (3) first.

15. Insofar as deduction under Section 80G of the Act is concerned, the same may not detain us any further. In view of the Tribunal's decision dated 21st November 2025 deleting the aforesaid addition, the penalty on this count cannot survive. Even otherwise, in our view, the officer had no jurisdiction to initiate or levy penalty on an issue contrary to binding decisions of the Tribunal. Hence, levy of penalty on this issue cannot be sustained.

16. Insofar as the disallowance of Education Cess is concerned, the aforesaid claim was made in the Return of Income filed on 13th February 2021 based on the decision of this Court in ***Sesa Goa Ltd.*** *(supra)*, which is dated 28th February 2020. Merely because the claim was given up on account of the subsequent retrospective amendment would not attract penal consequences. Both, the retrospective amendment, as well as the reversal of this Court's

decision based on the retrospective amendment, were subsequent to the furnishing of the Return of Income by the Petitioner. The action of the Assessing Officer in levying a penalty on this ground is contrary to the decision of this Court in the case of ***GM Modular (P.) Ltd. vs. PCIT [(2026) 185 taxmann.com 495]*** and, therefore, cannot be sustained.

17. Insofar as the issue of levy of penalty on account of the transfer pricing adjustment is concerned, we are of the view that the levy of penalty on an issue which is settled in accordance with the provisions of the Act cannot result in penal proceedings. As per Section 92CD(1), where any person has entered into an APA, and prior to the date of entering into the agreement, any Return of Income has been furnished for the Assessment Year to which the agreement applies, such person shall furnish, within a period of three months from the end of the month in which the said agreement was entered into, a modified return in accordance with and limited to the said APA. Therefore, the Act permits, or rather mandates, the person entering into an APA (the Petitioner) to furnish a modified return in accordance with the APA. The Petitioner has done precisely that. It has furnished a modified return on 30th June 2025, which is within the period of three months from the end of the month in which the APA was signed, namely, 27th March 2025. Once this is the position, Section 92CD(3) comes into play, which

provides that if the Assessment or Reassessment for an Assessment Year relevant to a previous year to which the agreement applies has been completed before the expiry of the period allowed for furnishing of a modified return under sub-Section (1), the Assessing Officer shall, in a case where the modified return is filed in accordance with the provisions of sub-Section (1), pass an order modifying the total income of the relevant Assessment Year having regard to and in accordance with the agreement. In the present case, therefore, the Assessing Officer is under a statutory mandate to pass an order modifying the total income of the Petitioner for A.Y. 2020-21 having regard to and in accordance with the APA. Once this is done, the result would be that the deduction claimed in the Return of Income on account of royalty payment to GIA US and that allowed in the Assessment Order would be the same. Once an item of income or expenditure as per the return and the Assessment Order is the same, there can be no question of penalty on account of such item. In this view of the matter, the penalty on this ground is also unsustainable. Though, as per Mr. Sharma's submission, the Assessing Officer may have time upto 31st March 2027 to pass an Assessment Order on the basis of the modified return filed by the Petitioner, that cannot mean that the impugned penalty order can be allowed to remain in force.

18. Now, if we turn to the provisions of Section 270A of the Act, we find that penalty under this Section is attracted on the under-reported income. Section 270A(2) provides that 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;*
>
> *b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished [17][or where return has been furnished for the first time under section 148];*
>
> *c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;*
>
> *d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub - section (1) of section 143;*
>
> *e) the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where [no return of income has been furnished or where return has been furnished for the first time under section 148];*
>
> *f) the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment;*
>
> *g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.*

19. The above mentioned clauses (a) to (f) above are clearly inapplicable in the present case. Even insofar as clause (g) is concerned, the same is not attracted since the income assessed or reassessed does not have the effect of reducing the loss or converting such loss into income, which has been reported in the modified return filed by the Petitioner.

20. Section 270A(8) provides that where under-reported income is in consequence of any misreporting, the penalty referred to in sub-Section (1) shall be equal to two hundred per cent of the amount of tax payable on under-reported income. The cases of misreporting are enumerated in Section 270A(9) of the Act as under :-

> *(a) misrepresentation or suppression of facts;*
> *(b) failure to record investments in the books of account;*
> *(c) claim of expenditure not substantiated by any evidence;*
> *(d) recording of any false entry in the books of account;*
> *(e) failure to record any receipt in books of account having bearing on total income; and*
> *(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.*

21. Mr. Mistri pointed out that the penalty has been levied in the instant case at the rate of 200% insofar as the transfer pricing adjustment to royalty is concerned by treating it to be a case of under-reporting of income in consequence of misreporting of income. In respect of the remaining two issues, penalty was levied at the rate of 50% by treating them to be cases of under-reporting of income. In our considered view, none of the aforesaid clauses can conceivably apply in the present case. Even insofar as clause (a) above is concerned, there is no question of misrepresentation of facts or

suppression of facts as all necessary facts were disclosed and were in the knowledge of the tax authorities. The mere fact that the royalty of a higher amount computed at 65% of the operating profits was claimed to be the Arm's Length Rate, but was eventually settled at 53.5%, would not mean that there was any misrepresentation or suppression of facts.

22. We are conscious of the fact that in the present case the APA between the Petitioner and the CBDT was signed on 27th March 2025 and though the impugned penalty order under Section 270A of the Act was passed on 28th March 2025, the 1st Respondent may not have been aware of the recently signed APA. Nevertheless, in view of the clear mandate of the statutory provisions discussed above, the impugned penalty order under Section 270A cannot be sustained.

23. We also find force in the submission of Mr. Mistri that the entire scheme of APA which has been introduced in the Act with a view to reduce litigation will be rendered ineffective and irrelevant if consequential proceedings / levies such as penalty can be levied by an Officer on account of a reduction in the claim of expenditure pursuant to a position settled by agreement in the APA by treating it as a case of under-reporting of income. In our considered view, the levy of penalty in such a manner is completely

contrary to the scheme of the Act and is, therefore, wholly unsustainable. Even otherwise, if the order is permitted to remain in force, it will result in manifest injustice, which warrants our interference.

24. For all the above reasons, we quash the impugned order dated 28th March 2025 passed under Section 270A of the Act by the Assessment Unit. Consequently, the order of rectification dated 21st August 2026 passed under Section 154 read with Section 270A of the Act, by which the quantum of penalty was reduced from Rs. 47,88,81,423/- to Rs. 35,11,79,712/- will not survive.

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

26. In view of this order, Mr. Mistri undertakes that the Appeal filed by the Petitioner will be withdrawn within a period of two weeks of this order being uploaded on the High Court website. The said undertaking is accepted. In the event this order is challenged by the Revenue and is set aside, the Appeal filed by the Petitioner before the CIT (A) shall stand revived and thereafter, be heard on merits and in accordance with law.

27. 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.

(FARHAN P. DUBASH, J.) **(B. P. COLABAWALLA, J.)**

Jyoti Pawar