

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5437 OF 2025

Man Truck & Bus India Pvt Ltd

.. Petitioner

Versus

The Assessment Unit, Income-Tax
Department & Ors.

.. Respondents

**Mr.Harsh R. Shah a/w Rajnandini Shukla, Pavan Savla,
Pratik Poddar**, Advocates for the Petitioner.

Mr.Akhileshwar Sharma, Advocate for the Respondents.

**CORAM : B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.**

DATE : SEPTEMBER 09, 2025

P. C.

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

2. The above Writ Petition is filed seeking to quash the penalty order dated 24th March 2025 imposing penalty on the Petitioner under Section 270A of the Income Tax Act, 1961 ("IT Act"). The Assessment Year in question is A.Y.2017-18.

3. According to the Petitioner, on 30th November 2017, the Petitioner had filed its return of income declaring its income as “NIL” after a set off of the brought forward loss of Rs.17.14 Crores. Subsequently, the Petitioner’s case was selected for scrutiny, and notices were issued in that regard. Thereafter, assessment proceedings were completed and an order was passed on 24th June 2021 under Section 143(3) read with Section 144C(3) of the IT Act. Under this Assessment Order, an addition of Rs.31.15 Crores, on account of a Transfer Pricing Adjustment, was made.

4. Being aggrieved by this order, the Petitioner preferred an Appeal before the CIT (Appeals) on 22nd November 2021. However, during the pendency of the Appeal, the Petitioner entered into an Advanced Pricing Agreement (“APA”) with the CBDT. In fact, the Petitioner had filed its Advanced Pricing Agreement Application with the CBDT as far back as on 26th March 2014, which finally culminated in the APA on 21st December 2021. The APA applied to A.Y.2011-12 to A.Y.2018-19. Since the APA was entered into between the Petitioner and the CBDT, under the provisions of Section 92CD(1), the Petitioner filed its modified Return of Income on 30th March 2022. According to the

Petitioner, under Section 92CD(3) read with Section 92CD(5) the Assessing Officer was to pass his order on the modified Return of Income, if any, by 31st March 2023. No such Assessment Order has been passed till date under Section 92CD. Therefore, according to the Petitioner, the modified Return filed by the Petitioner under Section 92CD(1) has become final and deemed to be accepted by the Department.

5. In the modified Return, the Petitioner has offered to tax a sum of approximately Rs.14.16 Crores towards the Transfer Pricing Adjustment as per the APA entered into between the Petitioner and the CBDT. It is in this light the Petitioner contends that since no addition has been made by the Assessing Officer under Section 92CD(3), penalty proceedings could not lie against the Petitioner. In this regard the Petitioner relied upon the provisions of Section 270A of the IT Act.

6. This apart, it was the contention of the Petitioner that it was mandatory for the officer levying the penalty to grant a virtual hearing to the Petitioner before passing the impugned penalty order. This submission was made on the basis of the Faceless Penalty (Amendment) Scheme, 2022 formulated by the CBDT. This, according to the

Petitioner, itself vitiated the penalty order as there was a breach of hearing been given to the Petitioner though asked for. It is for all these reasons that the Petitioner seeks quashing of the impugned penalty order dated 24th March 2025.

7. In the above Writ Petition, the 1st Respondent has filed an affidavit-in-reply dated 5th September 2025. In the affidavit-in-reply a preliminary objection is taken to the maintainability of the above Writ Petition. It is submitted that the Petitioner has a efficacious alternate remedy of filing an Appeal before the Commission of Income Tax (Appeals) against the penalty order. In these circumstances, it is submitted that the Writ Petition ought not to be entertained and the Petitioner be relegated to avail the alternate remedy.

8. However, despite the aforesaid preliminary objection, in the affidavit-in-reply, it is admitted by the Department that no order under Section 92CD(3) was passed by Respondent No.2 and the mistake crept in the penalty order because the secondary adjustment of Rs.14,16,49,404/- were not visible in the modified return of income filed by the Petitioner and no order under Section 92CD(3) was available with Respondent No.1 at the time of passing the penalty order. In the

affidavit it is stated that on verification of record it is found that the Petitioner has paid taxes as per the terms of the APA for A.Y.2017-18 and hence there is no demand upon the Petitioner.

9. It is further stated that since the Petitioner was not granted a personal hearing, the penalty order can be quashed and set aside, and the matter be remanded to the 1st Respondent to give a personal hearing to the Petitioner, only after which a fresh order would be passed.

10. We have heard the learned counsel appearing on behalf of the Petitioner as well as the learned advocate appearing on behalf of the Revenue. It is not in dispute that the Petitioner has entered into an APA with the CBDT on 21st December 2021. It is also not in dispute that as per the provisions of Section 92CD(1), the Petitioner filed its return of income on 30th March 2022 and offered to tax a sum of approximately Rs.14.16 Crores towards Transfer Pricing Adjustment as per the APA entered into between the Petitioner and the CBDT. The tax on this amount has also been paid by the Petitioner as admitted by the Revenue in its affidavit-in-reply. It is also an admitted fact that no order has been passed under Section 92CD(3) on the modified return of income filed by the Petitioner. We find that all these facts have not been taken into

consideration by Respondent No.1 before passing the impugned penalty order. Further, no virtual hearing was given to the Petitioner as mandated by the Faceless Penalty (Amendment) Scheme, 2022.

11. We, therefore, are of the view that the impugned penalty order has to go, and the matter ought to be remanded to the 1st Respondent to give a virtual hearing to the Petitioner and thereafter pass any fresh order that he may so choose. We must make it clear that the 1st Respondent shall take into consideration all the facts mentioned in this order before passing any fresh order.

12. The 1st Respondent shall also take into consideration that for A.Y.2016-17 on the basis of this very APA, penalty proceedings against the Petitioner were dropped. This would also be an additional fact that the 1st Respondent shall take into consideration before passing any fresh order.

13. In view of the aforesaid discussion, the impugned penalty order dated 24th March 2025 is hereby quashed and set aside. The 1st Respondent shall give a virtual hearing to the Petitioner and only thereafter pass a fresh speaking reasoned order after taking into

consideration all that is stated herein above. This entire exercise shall be completed by the 1st Respondent within a period of 12 weeks from today and the Petitioner shall co-operate with the 1st Respondent in that regard.

14. 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.

17. 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.

[AMIT S. JAMSANDEKAR, J.]

[B. P. COLABAWALLA, J.]