IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 378 OF 2026

GM Modular Pvt. Ltd .. Petitioner

Versus

Principal Commissioner of Income Tax .. Respondents

Adv. Dharan Gandhi and Adv. Aanchal Vyas for the Petitioner.
None for the Respondents.

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

DATE: JANUARY 27, 2026

P. C.

1. The present Petition is filed by the Petitioner to quash and set aside the impugned order dated 20th March, 2025 passed by Respondent No.1 under Section 264 of the Income Tax Act, 1961 and also the Penalty Order dated 29th January, 2024 passed by Respondent No.2 under Section 270A of the IT Act.

2. The short point in the present case is whether the penalty could have been levied under Section 270A in the light of the fact that, according to the Petitioner, there was no under reporting of income because the income offered to tax, in the return of income, was as per the decision of this Court in the case of ***CIT Vs. Ghatge Patil Transports Ltd [2014 (10) TMI 999 –***

Bombay High Court]. Hence, on the date when the return of income was filed, the deduction claimed by the Petitioner was as per the aforesaid decision. However, subsequently it appears that the ratio laid down in the ***Ghatge Patil Transports Ltd.(supra)*** decision was over ruled by the Hon'ble Supreme Court in the case of ***Checkmate Services Pvt. Ltd (2022) 448 ITR 518***. It is the submission of the Petitioner that, in such a scenario, there can never be under reporting of income and this is also made clear when one peruses Section 270A(6) of the IT Act. It is on this basis that the Petitioner seeks the quashing of the penalty Order dated 29th January, 2024. As far as the Order passed by Respondent No.1 under Section 264 is concerned, it is challenged on the basis that the said Order is virtually a non-speaking order and does not take into consideration either the provisions of Section 270A(6) or Section 270A (2) of the IT Act. According to the Petitioner, the Revisional Authority has proceeded on a completely wrong premise and has dismissed the Revision Application filed by the Petitioner.

3. We have heard the learned counsel for the Petitioner on this limited aspect. We find that this Writ Petition is coming up for the first time. We, therefore, direct the Petitioner to serve the Respondents privately, returnable on 10th February, 2026.

4. As far as the ad-interim relief is concerned, *prima facie*, we find considerable force in the arguments canvassed on behalf of the Petitioner. Section 270A (6) [the provision under which penalty is levied], *inter alia* stipulates that under reported income, for the purposes of Section 270A, shall not include, amongst other things, 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 bonafide and the assessee has disclosed all the material facts to substantiate the explanation offered. In the present case, the explanation offered by the Petitioner is that on the date of the filing of the return of income, the Petitioner was entitled to the deduction as per the decision of this Court in ***Ghatge Patil Transports Ltd. (supra)***. Once this is the case, the explanation was bonafide and the Assessing Officer could never have come to the conclusion that there was any under reporting of income. If there was no under reporting of income, there was no question of levying any penalty under Section 270A.

5. This is apart from the fact that under reporting of income can arise [under Section 270A (2)] only when the income assessed under Section 143(3) is higher than the income determined in the return processed under

Section 143(1)(a) of the IT Act. In the present case, atleast *prima facie*, the assessed income [under Section 143(3)], as per the Appellate Order, is not greater than the income processed under Section 143(1) (a). On this count also, atleast *prima facie*, we find that no penalty proceedings could have been initiated or any order passed under Section 270A of the IT Act. We, therefore, find that a strong *prima facie* case is made out for grant of ad-interim relief. Accordingly, there will be ad-interim relief staying the operation of the penalty order dated 29th January, 2024 passed by Respondent No.2 under Section 270A of the IT Act. In other words, no coercive action shall be taken by the Income Tax Department pursuant to the penalty order passed by Respondent No.2.

6. We now place the above matter on 10th February, 2026 'for ad-interim reliefs'. We put the parties to notice that we may dispose of the Writ Petition at that stage itself, time permitting.

7. Since, we have directed the Petitioner to serve the papers and proceedings in the above Writ Petition on the Respondents, we also direct that along with a copy of the Writ Petition, a copy of this Order shall also be served on the Respondents.

8. Stand over to 10th February, 2026.

9. 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.]**