

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

WRIT PETITION NO. 4002 OF 2026

Farah Khurshed Titina

.. Petitioner

V/s.

Income Tax Officer, Ward 22(1)(6), Mumbai &amp; Ors.

.. Respondents

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Mr. J. D. Mistri, Senior Advocate a/w Mr. Harsh Kothari for Petitioner.  
Ms. Mamta Omle for Respondents.

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

DATE : 5<sup>th</sup> OCTOBER 2026

P.C.:

1. Rule. Respondents waive service. With the consent of the parties, Rule made returnable forthwith and heard finally.
2. By way of this Writ Petition, the Petitioner challenges the impugned letter/ order dated 23<sup>rd</sup> July 2026, by which the application made by the Petitioner on 22<sup>nd</sup> July 2026 under Section 270AA of the Income Tax Act, 1961 (“the Act”) seeking waiver of penalty was rejected by Respondent No. 1 - Assessing Officer (“AO”).

3. Briefly stated, the facts giving rise to the present Writ Petition are as under:
- a. The Petitioner's case was selected for scrutiny for the Assessment Year 2024-25. While collecting details which would be required during the assessment proceedings, the Petitioner realised that she had inadvertently made certain erroneous claims for deduction under Chapter VI-A of the Act. The Petitioner, on realising the error, re-computed her income for the year, filed a revised computation of income and voluntarily paid a sum of Rs. 2,67,500 being the tax and interest that was payable on account of the aforesaid error *vide* challan dated 22<sup>nd</sup> September 2025.
- b. Respondent No. 2, after noting that the Petitioner had paid the additional tax and interest, completed the assessment and passed the Assessment Order dated 25<sup>th</sup> November 2025, accepting the revised total income determined by the Petitioner. However, Respondent No. 2 initiated penalty under Section 270A of the Act for under-reporting of income which is in consequence of misreporting and issued a notice dated 25<sup>th</sup> November 2025 under Section 274 read with Section 270A of the Act asking the Petitioner to show cause as to why an order imposing penalty under Section 270A of the Act should not be passed.

- c. The Petitioner made an application under Section 270AA(2) of the Act in Form No. 68 on 23<sup>rd</sup> December 2025 seeking immunity from imposition of penalty under Section 270A of the Act.
- d. The above application was rejected by the AO *vide* order dated 1<sup>st</sup> January 2026, on the basis that immunity could not be granted if the penalty is initiated for under-reporting of income in consequence of misreporting of income.
- e. Thereafter, Respondent No. 2 passed an order dated 29<sup>th</sup> June 2026 under Section 270A of the Act imposing a penalty of Rs. 4,72,442.
- f. The Petitioner, placing reliance upon the amendment made in Section 270AA of the Act by the Finance Act, 2026 by which an application for waiver of penalty could now be made even in case of misreporting of income, filed a second application seeking waiver of the said penalty in Form No. 68 on 22<sup>nd</sup> July 2026. The Petitioner also made a payment of Rs. 2,36,221 being additional income-tax on 21<sup>st</sup> July 2026, as was required under the amended provisions of Section 270AA(1)(b) of the Act.

- g. The AO, in his impugned letter/ order dated 23<sup>rd</sup> July 2026 rejected the Petitioner's second application for waiver, *inter alia*, repeating his view that waiver cannot be granted in cases of under-reporting of income which is in consequence of misreporting of income. The AO further stated that the Petitioner had already availed of the remedy under Section 270AA by filing an earlier application and that Section 270AA does not provide for filing of a second application, as neither a fresh cause of action was created nor a fresh right conferred upon the Petitioner.
4. In light of the above factual background, Mr. Mistri, learned Senior Advocate who appeared on behalf of the Petitioner, referring to the amendments made by the Finance Act, 2026 in Section 270AA of the Act w.e.f. 1<sup>st</sup> March 2026 pointed out that, an Assessee was now permitted to file a waiver application even after the passing of a penalty order under Section 270A of the Act, and further, even in cases where penalty is levied for under reporting of income which is in consequence of misreporting of income.
5. Mr. Mistri, therefore, submitted that in light of this amendment, it is not

necessary to go into the question as to whether the AO was right in categorizing the Petitioner's case to be that of misreporting of income and not mere under-reporting of income.

6. Mr. Mistri submitted that the AO, in complete disregard to the amendments made by Finance Act, 2026, had referred to Section 270AA(3) of the Act as was applicable prior to its amendment and wrongly rejected the Petitioner's application for waiver of penalty on the basis that penalty was levied on account of misreporting of income. He further submitted that all the three conditions specified in sub-section (1) of Section 270AA of the Act (as amended) were satisfied by the Petitioner and, once that was the case, the AO was bound to grant waiver of penalty as per the clear language of Section 270AA(3) of the Act. Mr. Mistri further contended that the second application for waiver of penalty was filed by the Petitioner in light of the amendments made by the Finance Act, 2026 which gave rise to a new and different cause of action, and could not be rejected simply on the basis that the first application was rejected, on the basis of the pre-amended provision existing at the time when the statute did not permit filing of waiver application in cases of misreporting of income.

7. On the other hand, Ms. Omle, learned Advocate who appeared on behalf of

the Respondents, referred to the order dated 1<sup>st</sup> January 2026 passed by the AO and contended that the AO had correctly rejected the first waiver application and denied immunity to the Petitioner. Ms. Omle submitted that once the first waiver application was rejected, the Petitioner was precluded from filing a second waiver application under Section 270AA of the Act. Without prejudice to the above argument, she submitted that, if the Court was not inclined to accept her argument, then she requested that the impugned letter/order be set aside and the AO be directed to decide the second waiver application filed by the Petitioner in light of the amendments made by the Finance Act, 2026.

8. We have heard both the parties and have also perused the material on record. At the outset, we set out sub-sections (1) to (3) of Section 270AA as were applicable prior to the amendments made by the Finance Act, 2026 and sub-sections (1) to (3A) which were introduced by the Finance Act, 2026 w.e.f. 1<sup>st</sup> March 2026 substituting the earlier sub-sections (1) to (3):

| Prior to Finance Act, 2026                                                                                                                                                   | Post amendment by the Finance Act, 2026                                                                                                                                                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) An assessee may make an application to the Assessing Officer to grant immunity from imposition of penalty under Section 270A and initiation of proceedings under Section | (1) An assessee may make an application to the Assessing Officer to grant immunity from imposition or, as the case may be, waiver of penalty under Section 270A and immunity from initiation of proceedings |

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| <p>276C or Section 276CC, if he fulfils the following conditions, namely:—</p> <p>(a) the tax and interest payable as per the order of assessment or reassessment under sub-section (3) of Section 143 or Section 147, as the case may be, has been paid within the period specified in such notice of demand; and</p> <p>(b) no appeal against the order referred to in Clause (a) has been filed.</p> | <p>under Section 276C or Section 276CC, if he fulfils the following conditions, namely:—</p> <p>(a) the tax and interest payable as per the order of assessment under sub-section (3) of Section 143 or reassessment under Section 147 has been paid within the period specified in the notice of demand;</p> <p><b>(b) where penalty has been levied or, as the case may be, leviable under the circumstances referred to in sub-section (9) of Section 270A, additional income-tax amounting to one hundred per cent of the amount of tax payable on under-reported income has been paid within the period specified in the notice of demand, in lieu of such penalty; and</b></p> <p>(c) no appeal has been filed against the order referred to in Clauses (a) and (b).</p> |
| <p>(2) An application referred to in sub-section (1) shall be made within one month from the end of the month in which the order referred to in Clause</p>                                                                                                                                                                                                                                              | <p>(2) An application referred to in sub-section (1) shall be made within one month from the end of the month in which the order referred to in Clause (a) and Clause</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

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| (a) of sub-section (1) has been received and shall be made in such form and verified in such manner as may be prescribed.                                                                                                                                                                                                                                                                                                                                                                                                       | (b) of the said sub-section has been received by the assessee, in such form and verified in such manner, as may be prescribed.                                                                                                                                                                                                                                                     |
| (3) The Assessing Officer shall, subject to fulfilment of the conditions specified in sub-section (1) and after the expiry of the period of filing the appeal as specified in Clause (b) of sub-section (2) of Section 249, grant immunity from imposition of penalty under Section 270A and initiation of proceedings under Section 276C or Section 276CC, <b>where the proceedings for penalty under Section 270A has not been initiated under the circumstances referred to in sub-section (9) of the said Section 270A.</b> | (3) The Assessing Officer shall, on fulfilment of the conditions specified in sub-section (1) and after the expiry of the period of filing the appeal as specified in Clause (b) of sub-section (2) of Section 249, grant immunity from imposition or, as the case may be, waiver of penalty under Section 270A and initiation of proceedings under Section 276C or Section 276CC. |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | (3A) No immunity or, as the case may be, waiver under sub-section (3) shall be granted where any proceedings has been initiated under Chapter XXII.                                                                                                                                                                                                                                |

*(emphasis supplied)*

9. From a plain reading of Section 270AA(3) of the Act as was applicable prior to the amendment by the Finance Act, 2026, it is clear that immunity

from penalty could not be granted where the proceedings for penalty under Section 270A of the Act had been initiated under the circumstances referred to in Section 270A(9) of the Act i.e. in cases where penalty is levied for under-reporting of income which is in consequence of misreporting of income. However, we note that the position has changed considerably as a result of the amendments made by the Finance Act, 2026 w.e.f. 1<sup>st</sup> March 2026. As is evident from the amendments made, an application for waiver of penalty already levied, can now be made and the same will have to be considered by the AO even in circumstances where penalty is levied for under-reporting of income which is in consequence of misreporting of income. In such cases where penalty has been imposed on account of misreporting of income, Section 270AA(1)(b) of the Act [as now applicable] requires the Assessee to pay additional income-tax amounting to one hundred per cent of the amount of tax payable on the under-reported income within the period specified in the notice of demand, in lieu of such penalty.

10. In view of the above, we are of the opinion that there is no doubt that an application seeking waiver of penalty can be filed even in circumstances where penalty has been levied or is leviable under the circumstances referred to in Section 270A(9) of the Act i.e. misreporting of income (after

the amendments made by the Finance Act, 2026). Consequently, we hold that the AO was wrong in rejecting the application filed by the Petitioner on 22<sup>nd</sup> July 2026 seeking waiver of penalty on the basis that penalty had been levied on account of misreporting of income.

11. We now deal with the other aspect on which the waiver application was rejected by the AO, i.e., the Petitioner had already availed the remedy under Section 270AA of the Act by filing an earlier application on 23<sup>rd</sup> December 2025 and, therefore, the second application filed on 22<sup>nd</sup> July 2026 could not be accepted. As can be seen from the provisions of Section 270AA(2) of the Act as were applicable prior to the amendment made by Finance Act, 2026, an application for waiver of penalty could be made within one month from the end of the month in which the order of assessment or reassessment was received by the Assessee.
12. Post amendment by the Finance Act, 2026, we note that Section 270AA(2) of the Act permits a waiver application to be made within one month from the end of the month in which the order referred to in Clause (a) of Section 270AA(1) of the Act [i.e. the order of assessment or reassessment], and the order referred to in Clause (b) of Section 270AA(1) of the Act [i.e. the penalty order], is received by the Assessee.

13. We hold that in view of the above amendment, a fresh cause of action has arisen in as much as, an application for waiver can now be filed within one month from the end of the month in which the penalty order is received by the Assessee which was not earlier possible. We, therefore, hold that the Petitioner was well within her rights to file an application for waiver on 22<sup>nd</sup> July 2026, which was within one month from the end of the month in which penalty order dated 29<sup>th</sup> June 2026 was received by the Petitioner and that the earlier waiver application, which was filed on 23<sup>rd</sup> December 2025 does not bar the second application. The fact that all the conditions specified in Section 270AA(1) have been satisfied by the Petitioner is not disputed by Ms. Omle. Having regard to the same, we see no purpose in sending the matter back to the AO to decide the matter afresh.
14. This is moreso when we agree with the submission canvassed by Mr. Mistri to the effect that, it is clear from a reading of Section 270AA(3) of the Act that once all the conditions specified in sub-section 270AA(1) are fulfilled, it is mandatory on the part of the AO to grant immunity from imposition or waiver of penalty under Section 270A as well as initiation of proceedings under Sections 276C or 276CC of the Act, after the expiry of the period of filing the appeal specified in Section 249(2)(b) of the Act.

15. In light of the above discussion, we quash the impugned letter/ order dated 23<sup>rd</sup> July 2026 and direct Respondent No. 1 to allow the application filed by the Petitioner and grant waiver of penalty under Section 270A of the Act and immunity from initiation of proceedings under Section 276C or Section 276CC of the Act within a period of 4 weeks from the date of this order being brought to the attention of the AO.
16. 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.

( FARHAN P. DUBASH, J. )

( B. P. COLABAWALLA, J.)

Shubham Gadhavepatil

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SHESHRAO  
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Digitally signed  
by SHUBHAM  
SHESHRAO  
GADHAVEPATIL  
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