

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

WRIT PETITION (L) NO. 28180 OF 2026

M/s. Sur Gems

through its Authorized Representative

Saket Mehta

.. Petitioner

V/s.

Principal Commissioner of Income Tax

(Central) Mumbai - 2 & Ors.

.. Respondents

Mr. Prathamesh Kamath a/w Mr. Kayush Zaiwalla i/b Vineetha Khandelwal for the
Petitioner.Mr. N. C. Ranganayakulu for the Respondents.

CORAM : B. P. COLABAWALLA AND
FARHAN P. DUBASH, JJ.DATE : 17th SEPTEMBER 2026

P.C.:

1. Rule. Respondents waive service. With the consent of the parties, Rule made returnable forthwith and heard finally.
2. The above Writ Petition has been filed seeking to quash and set aside the impugned order dated 28th July 2026 passed by Respondent No. 1 under Section 220(6) of the Income Tax Act, 1961 (**"the Act"**). The Petitioner also seeks a direction to Respondent No. 1 to reconsider and decide the Petitioner's stay application dated 23rd March 2026 in accordance with law, by passing a reasoned and speaking order, after considering the specific

grounds and submissions of the Petitioners. The other relief sought is a direction restraining the Respondents from taking any coercive steps for recovery of the alleged outstanding demand of Rs. 15.96 Crores for Assessment Year 2017-18 during the pendency of the appeal filed by the Petitioner before the Commissioner of Income Tax Appeals (“CIT (A)”).

3. The brief facts of the case are that, for Assessment Year 2017-18, the Petitioner filed its Return of Income on 30th October 2017. The said Return of Income was processed under Section 143(1) of the Act on 30th October 2017 determining the taxable income at Rs. 3,00,60,630/-. The Petitioner’s Return of Income was thereafter picked up for scrutiny assessment and an order was passed under Section 143(3) determining the Petitioner’s total income at Rs. 4,18,45,510/-. The Assessing Officer thereafter passed a Rectification Order on 31st March 2021 under which the total income of the Petitioner was assessed at Rs. 4,35,43,270/-. Effectively, the Assessing Officer made an addition of Rs. 1,34,82,639/- to the total income of Rs. 3,00,60,630/- on account of a bogus claim for labour charges claimed by the Petitioner.
4. Aggrieved by the order passed by the Assessing Officer, the Petitioner filed an appeal before the CIT (A). The CIT (A) directed the Assessing Officer to

delete the addition made of Rs. 1,34,82,639/-. The Assessing Officer, accordingly, passed an order giving effect (OGE) to the CIT (A)'s order and accordingly recomputed the total income of the Petitioner at Rs. 3,00,60,630/-.

5. It appears that thereafter, on 31st March 2024, a Show Cause Notice was issued to the Petitioner under Section 148A(b) of the Act. The Petitioner was asked to show cause why the assessment for A.Y. 2017-18 ought not to be reopened. The Petitioner, on 10th April 2024, filed its reply to the said Show Cause Notice. The reply of the Petitioner was not found acceptable, and therefore, on 17th April 2024, an order was passed under Section 148A(d). Pursuant thereto, on the very same date (i.e. 17th April 2024), a notice under Section 148 was issued to the Petitioner. Thereafter, a Assessment Order dated 16th January 2026 was passed by the Deputy Commissioner of Income Tax (DCIT) under Section 147 read with Section 143(3) of the Act. Along with the Assessment Order, a Demand Notice dated 16th January 2026 was also issued to the Petitioner under Section 156 of the Act. Being aggrieved by the reassessment order, the Petitioner filed an appeal before CIT (A), which is pending till date.
6. During the pendency of this appeal, on 23rd March 2026, the Petitioner filed

an application under Section 220(6) before the Principal Commissioner of Income Tax (Respondent No. 1) seeking a stay of the entire demand. Respondent No. 1, by his order dated 28th July 2026 rejected the said application filed by the Petitioner and granted liberty to the Assessing Officer to proceed with the recovery of the outstanding demand for A.Y. 2017-18 in accordance with the provisions of the Act. Being aggrieved by this order passed by Respondent No. 1, the present Writ Petition has been filed.

7. The main ground of challenge to the aforesaid order by the Petitioner is that though the Petitioner has a very strong case to challenge the notices issued under Section 148, and the subsequent Assessment Order, the merits of the case were not even considered by Respondent No. 1 when passing the impugned order. This was moreso when one takes into consideration that the income returned by the Petitioner was approximately Rs. 3 Crores and the addition made was of Rs. 15.96 Crores, which was almost five times the said amount. The Petitioner's main contention was that the notice issued under Section 148 was time barred under the provisions of Section 149(1) (b) of the Act and that there is not even a mention of the said contention in the impugned order. It is on this basis that the Petitioner contends that the impugned order ought to be quashed and an unconditional stay ought to be

granted in its favour till the disposal of its appeal pending before the CIT (A). The Petitioner also fairly stated that in order not to cause any prejudice to the rights of the Revenue, directions can be given to the CIT (A) to hear the appeal filed by the Petitioner and pending before it, in a time bound manner.

8. On the other hand, learned Advocate appearing on behalf of the Revenue, submitted that by virtue of the CBDT Instruction No. 1914 dated 2nd December 1993, as subsequently partially modified by various Office Memorandums issued by the CBDT, granting of a stay is prescribed after payment of 20% of the total demand only in cases where an appeal of the Assessee is pending before the CIT (A). Considering these instructions, there is no question on the Petitioner being granted any unconditional stay. Therefore, it is the argument of the Revenue that at least 20% of the demand ought to be deposited with the Revenue in order to enable them to seek a stay of the balance demand due.
9. We have heard the learned Counsel for the parties at great length and have also perused the papers and proceedings in the above Writ Petition. From the impugned order, we find that though, it notes certain contentions (not all) of the Petitioner, Respondent No. 1 does not deal with them even on a

prima facie basis, on the footing that the appeal is pending before the CIT (A). In fact, the issue of limitation though not raised in the stay application is specifically raised before the CIT (A) and which goes to the root of the matter. On perusing the record, at least *prima facie*, we find substance in the arguments canvassed by the Petitioner on the issue of limitation. Of course, this will have to be finally adjudicated by the CIT (A) in the appeal filed by the Petitioner, pending before him. We are, therefore, of the clear view that in the peculiar facts of the present case, and since there is substance in the arguments of the Petitioner regarding limitation, the Petitioner, would be entitled to an unconditional stay of the entire demand. We say this also because this appears to be a high-pitched assessment whereby the addition made is almost five times the returned income of the Petitioner, and the impugned order proceeds on the wrong premise that since the Petitioner had a gross turnover of Rs. 76.51 Crores, it was in a sound financial position. Respondent No. 1 has instead overlooked the fact that, for Assessment Year 2017-18, even though the gross turnover of the Petitioner was approximately Rs. 109.52 Crores, the income of the Petitioner for that year was only approximately Rs. 3 Crores.

10. In view of the foregoing discussion, we quash and set aside the impugned order dated 28th July 2026 and direct that till the disposal of the appeal filed

by the Petitioner before the CIT (A), the entire demand raised on the Petitioner, pursuant to the Assessment Order dated 16th January 2026, shall remain stayed. We would also request the CIT (A) to dispose of the Petitioner's appeal as expeditiously as possible, and preferably within a period of six months from the date on which this order is brought to its attention.

11. We may hasten to add that any observations made by us in this order are only *prima facie*. The CIT (A) shall decide the appeal filed by the Petitioner on its own merits and in accordance with law, uninfluenced by any observation made by us herein.
12. 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.
13. 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

SHUBHAM
SHESHRAO
GADHAVEPATIL
Digitally signed
by SHUBHAM
SHESHRAO
GADHAVEPATIL
Date:
2026.09.23
14:19:12 +0530

Page 7 of 7

Order dated 17th September 2026.