IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No. 7483 of 2013

Patel Seeds Private Limited. .. **Petitioner.**

Versus

The Union of India & Others. .. **Respondents.**

Shri. Siddhartha B. Yawalkar, Advocate, for petitioner.

Shri. Alok Sharma, Assistant Government Pleader, for respondent Nos.1 to 5.

Coram: T.V. NALAWADE &
K.L. WADANE, JJ.

Date: 8 MARCH 2018

ORDER:

1) The petition is filed under Article 226 of the Constitution of India for direction to the respondent - Income Tax Department to grant refund of income tax amount in respect of the years 1989-90, 1993-94, 1994-95 and 1995-96. Further relief is claimed for direction to the respondent to withdraw the notices issued under section 226(3) of the Income Tax Act to the bankers and

customers of the petitioner-company. Direction is also claimed to give the details of account of recoveries made by the Income Tax Department of the taxes from the customers. Both the sides are heard.

2) The grievance is in respect of returns of the years 1989-90, 1993-94, 1994-95 and 1995-96. The Income Tax Department has filed reply affidavit which is exhaustive. In the reply affidavit at paragraph 5 the Income Tax Officer has informed that for those years the returns filed by the petitioner were assessed by the assessing authority and necessary orders were also passed. Specific amounts of the refund which were arrived at after assessment of the tax are mentioned. There is specific mention of the amounts of the refund for the respective years. In the reply affidavit it is mentioned that for the year 1988-89 resultant refund was issued in favour of the petitioner and no claim is pending. The contents of the affidavit show that such exercise was done in respect of other years also. Though in para 13 there is mention that refund in respect of some amounts for 1988-89, 1993-94 and 1995-96 are yet to be verified from the record that

does not mean that orders mentioned in earlier para are not made. Whenever there is such order, the order can be challenged by filing appropriate proceeding before the appellate authority. Only after taking such decision a party can come before this Court. For reconsideration under the Act time limit is given for every process. For filing application for refund in such case there is also time limit and this Court cannot ignore that circumstance also.

3) It appears that for subsequent years even the income tax returns were not filed by the present petitioner. He was defaulter and the Income Tax Department was required to make inquiry with his company and also the customers. This circumstance cannot be ignored by this Court. This Court is not expected to give direction to the Income Tax Department to give information in respect of the customers of the petitioner as that record was considered and assessment must have been made on the basis of record of that customer. Liability of third party as assessee, if at all, was to be ascertained and it was done by the Income Tax Department. Due to conduct of the petitioner of not even

filing returns in subsequent years and the aforesaid circumstances, this Court holds that no relief can be granted in favour of the petitioner. In the result, the petition stands dismissed.

Sd/-
(K.L. WADANE, J.)

Sd/-
(T.V. NALAWADE, J.)

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