IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13620 of 2017

Mrs.Begum Pasha Bee ... Petitioner

Vs.

1.The Principal Chief Commissioner,
O/o The Principal Chief Commissioner,
Income Tax Department,
121, M.G.Road, Nungambakkam,
Chennai - 600 034.

2.The Chief Commissioner,
O/o The Chief Commissioner,
Income Tax Department,
121, M.G.Road, Nungambakkam,
Chennai - 600 034.

3.The Commissioner of Income Tax (Exemptions)
O/o. The Chief Commissioner,
Income Tax Department,
121, M.G.Road, Nungambakkam,
Chennai - 600 034.

4.The Commissioner of Income Tax,
Income Tax Department,
121, M.G.Road, Nungambakkam,
Chennai - 600 034. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue of writ of mandamus, directing the respondents 1 to 4 to furnish information sought for by the petitioner considering petitioner applications dated 27.01.2016 and 21.03.2016, submitted to the respondents 1 to 4 respectfully, under Class (b) of Sub-section (1) of Section 138 of the Income Tax Act, 1961, within a time frame.

For Petitioner	:	Mr.N.Muralikumaran for M/s.Mcgan Law Firm
For Respondents	:	Mrs.Hema Muralikrishnan Senior Panel Counsel.

O R D E R

Heard Mr.N.Muralikumaran, for M/s.Mcgan Law Firm, learned counsel for the petitioner and Mrs.Hema Muralikrishnana, learned Senior Panel Counsel appearing for the respondents.

2. The relief sought for by the petitioner in this writ petition appears to be an innocuous relief to direct the respondents 1 to 4 to consider the petitioner's application filed under Section 138 (1) (b) of the Income Tax Act, 1961, within the time frame.

3. The petitioner's grievance appears to be with regard to functioning of a public charitable trust, which has been granted under Section 12-A of the Registration Act by the Income Tax Department. Though the petitioner in the affidavit filed in support of the writ petition has made various allegations and averments with regard to his family members etc, those allegations are not gone into and cannot be gone into or adjudicated in this writ petition for more than one reason. Firstly, all those private parties, whose names are mentioned in the affidavit, have not been impleaded as respondents in the writ petition. Secondly, the allegations made against those private parties, pertain to administration of affairs of the Trust and management of its assets, which cannot be gone into in a writ petition that too, when a direction is sought against the Income Tax Department on an application stated to have been submitted by the petitioner under Section 138 (1) (b) of the Income Tax Act.

4. The petitioner has also sought for certain information under Right to Information Act and he has pursued the remedy available under the said Act and preferred an appeal. Prior to that the petitioner filed a writ petition before this Court in W.P.No.26322 of 2015 for a direction upon the Deputy Director of Income Tax Exemptions II, and the Income Tax Officer (OSD) Exemptions III, Chennai to consider the representation dated 30.06.2015. The said writ petition was disposed of by order dated 08.09.2015, by directing the respondents to consider the representation. Pursuant thereto, the petitioner has received a reply dated 16.11.2015 from the Income Tax Officer, Exemptions Ward - 1, Chennai, which is in a tabulated format, dealing with a contention raised by the petitioner in its letter dated 19.01.2015. Serial No.6 of the said reply deals with the contention that the communication of the petitioner dated 30.06.2015 along with order of this Court in W.P.No.26322 of 2015, should be made to the authority under Section 138 (b) of the Income Tax Act to come to the subjective satisfaction that the information sought for, is in public interest. The reply given by the Income Tax Office is to the following fact:

"The provisions of 138 (b) stipulate that the person seeking information relating to an assessee should make an application to the prescribed authority mentioned in Section 138 (b) of Income Tax Act, 1961, in the prescribed Form (Form No.46). Hence, application may be made to the prescribed authority in the prescribed form."

5. Taking a clue from the above reply, the petitioner has filed an application under Section 138 (b) of the Income Tax Act, dated 21.03.2016. This application is stated to have been sent by sped post and shown to have been received by the office of the third respondent on 22.03.2016 vide postal Acknowledgment card.

6. Thus, considering the limited relief sought for by the petitioner and without going into the allegations made by the petitioner against those private parties, there will be a direction to the competent authority of the third respondent department to consider the petitioner's representation dated 21.03.2016, purported to be an application for information under Section 138 (1) (b) of the Income Tax Act and pass a speaking order on merits and in accordance with law after notice to all concerned including the said Trust and its Trusties within a period of eight weeks from the date of receipt of a copy of this order.

7. With the above direction, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Principal Chief Commissioner,
O/o The Principal Chief Commissioner,
Income Tax Department,
121, M.G.Road, Nungambakkam,
Chennai - 600 034.

2.The Chief Commissioner,
O/o The Chief Commissioner,
Income Tax Department,
121, M.G.Road, Nungambakkam,
Chennai - 600 034.

3.The Commissioner of Income Tax (Exemptions)
O/o. The Chief Commissioner,
Income Tax Department,
121, M.G.Road, Nungambakkam,
Chennai - 600 034.

4.The Commissioner of Income Tax,
Income Tax Department,
121, M.G.Road, Nungambakkam,
Chennai - 600 034.

+1cc to Mr.Hema MuraliKrishnan, Advocate SR.No.51681
+1cc to Mr.Mcgan Law Firm, Advocate SR.No.519907

SJ(CO)
GN(16/08/2017)