In the High Court of Judicature at Madras

Dated : 01.2.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.2055 of 2018 & WMP.Nos.2571 to 2573 of 2018

Fr.Dr.M.Thomas SDB, Headmaster,
Don Bosco Higher Secondary school ...Petitioner
Polur -606 803.

Vs

1.Union of India rep by the Secretary,
Ministry of Finance, North Block,
New Delhi-110 001.

2.The Central Board of Direct Taxes,
rep. by the Secretary Ministry of
Finance, North Block, New Delhi.
110 001.

3.The Principal Chief Commissioner
of Income Tax, (Chennai), 121,
M.G.Road, Nungambakkam,Chennai-34.

4.The Commissioner of Income
Tax (TDS), 7th Floor, New Block,
Aayakar Bhawan, 121, M.G.Road,
Chennai-34.

5.The Director of Treasuries and
Accounts, Office of the Treasuries
and Accounts, Panagal Building,
No.1, Jeenis Road, Saidapet,
Chennai-15

6.The Director of Elementary
Education, DPI Campus,
College Road, Chennai-6.

7.The Correspondent, R.C.M.Primary
School Perumanam-606806,Pavithram
Via Thiruvannamalai District. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated 07.10.2015 in C.No.Misc.PRO/2015-16 on the file of the 3rd respondent and the consequential Circular dated 26.10.2015 in R.C.No.23545/ 2014/E1 on the file of the 5th respondent, quash the same in respect of the petitioner Don Bosco Higher Secondary School Polur-606 803, Thiruvannamalai (District) and direct the respondents to comply with the Circular of the 2nd respondent Central Board of Direct Taxes dated 05.12.1977 in F.No.200/88/75-IT (AI).

For Petitioner : Fr.Xavier Arulraj, SC for Ms.A.Arul Mary
For Respondents 1 to 4 : Mr.Navin Durai Babu, JSC
For Respondents 5 & 6 : Ms.P.Rajalakshmi, AGP

ORDER

Mr.Navin Durai Babu, learned Junior Standing Counsel accepts notice for respondents 1 to 4. Ms.P.Rajalakshmi, learned Additional Government Pleader accepts notice for respondents 5 and 6. Heard both. In view of the fact that the issue involved is covered by a decision of this Court, the writ petition itself is taken up for final disposal without ordering notice to the seventh respondent.

2. The prayer sought for in this writ petition is for the issuance of a Writ of Certiorarified Mandamus to quash the order passed by the third respondent dated 07.10.2015 and the consequential circular issued by the fifth respondent dated 26.10.2015 and for a direction to the respondents to comply with the circular issued by the second respondent dated 05.12.1977.

3. An identical prayer was considered by this Court in a batch of cases in the case of Institute of Fransican Missionaries of Mary rep.by its President Vs. Union of India & Others [WP.No.37565 of 2015 etc. cases dated 22.12.2016] and those writ petitions were allowed. The operative portion of the order dated 22.12.2016 reads as follows :

> "For all the above reasons, all the writ petitions are allowed and it is held that no tax can be deducted at source from the salaries and other monetary benefits effected to persons, who are the members of the religious congregation and it would be sufficient if the head of the institution concerned certifies the names of the staff members, who were members of the religious body and the period, during which, they have

served and the designation of the post."

4. The learned Junior Standing Counsel appearing for respondents 1 to 4 would submit that as against the said common order dated 22.12.2016, the Revenue preferred writ appeals and the matters are pending.

5. However, it is not disputed that no interim order has been granted in the appeals filed by the Revenue. Since the petitioner is also similarly placed person as that of the petitioners in the said batch of cases, this Court is inclined to grant similar relief to the petitioner herein.

6. Accordingly, following the common order dated 22.12.2016, the writ petition is allowed and it is held that no tax can be deducted at source from the salaries and other monetary benefits effected to persons, who are the members of the religious congregation and it would be sufficient if the head of the institution concerned certifies the names of the staff members, who were members of the religious body and the period, during which, they have served and the designation of the post. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

To

1.The Secretary to Union of India,
Ministry of Finance, North Block,
New Delhi-110 001.

2.The Secretary,
Central Board of Direct Taxes,
Ministry of Finance, North
Block, New Delhi. 110 001.

3.The Principal Chief Commissioner of Income Tax,
(Chennai), 121,
M.G.Road, Nungambakkam,Chennai-34.

4.The Commissioner of Income Tax (TDS),
7th Floor, New Block,
Aayakar Bhawan, 121, M.G.Road, Chennai-34.

5.The Director of Treasuries and Accounts,
Office of the Treasuries and
Accounts, Panagal Building, No.1,
Jeenis Road, Saidapet, Chennai-15

6.The Director of Elementary Education,
DPI Campus,College Road,Chennai-6.

+1cc to Mr.Hema Muralikrishnan, Advocate SR.No.8043
+2cc to Mr.A.Arul Mary, Advocate SR.No.7893
+2cc to Government Pleader SR.No.8403, 8757

WP.No.2055 of 2018 & WMP.
Nos.2571 to 2573 of 2018

GN(21/02/2018)