IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2021

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.NO.21815 OF 2021
AND
W.M.P.NOS.23004 & 23005 OF 2021

Franciscan Sisters of Saint Aloysius Gonzaga,
Rep. by its President,
Door No.6, St.Agnes Street,
Puducherry – 605 001.

... Petitioner

-Vs.-

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

2. The Central Board of Direct Taxes,
Represented 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 - 600 034.

4. The Commissioner of Income Tax (TDS),
7th Floor, New Block,
Aayakar Bhawan,
121, M.G.Road,
Chennai - 600 034.

5. The Director of Treasuries and Accounts,
Office of the Treasuries and Accounts,
Panagal Building,
No.1 Jeenis Road,
Saidapet,
Chennai - 600 015.

6. The Commissioner of School Education,
DPI Campus, Directorate of School Education,
College Road,
Chennai - 600 006.

7. The Director of Elementary Education,
DPI Campus, College Road,
Chennai - 600 006.

8. The Director of Teacher Education
Research and Training,
DPI Campus, College Road,
Chennai - 600 006.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling 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 and quash the same in respect of the catholic nuns among the teaching and the non-teaching staff working in the educational institutions of the petitioner educational agency, as mentioned in the Annexure to the petition, and directing the respondents to comply with the Circular of 2nd respondent Central Board of Direct Taxes dated 05.12.1977 in F.No.200/88/75-IT(AI).

For Petitioner : Mr.Father Xavier,
Senior Advocate
of M/s.Father Xavier Associates
Instructed by
Ms.A.Arul Mary

For Respondents : Ms.Hema Muralikrishnan
Senior standing counsel
For R1 to R3

Mr.Karthik Ranganathan
Senior standing counsel
For R4

Mr.NRR.Arun Natarajan
Government Advocate
For R5 to R8

O R D E R

Mr.Father Xavier, learned senior Advocate instructed by counsel on record for writ petitioner is before this Virtual Court.

2. Short point (shorn of elaboration) that falls for consideration in this matter is whether salary payable to nuns, would attract 'Tax Deduction at Source' ['TDS'] qua 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity] i.e., in other words whether TDS deduction qua salary payable to nuns is imperative.

3. Department took the stand that income which are adumbrated in Section 10 of the IT Act alone can be exempt. To be noted, this was followed by a circular in this regard.

4. The above matter came up for consideration before a Hon'ble Single Judge of this Court in a batch of matters being W.P.Nos.37565 to 37567 of 2015 and Hon'ble Single Judge in and by a elaborate order dated 22.12.2016 held in favour of the Assessee. To be noted, Hon'ble Single Judge inter alia held that as long as institution certifies names of staff members who are members of religious body, they would be exempt. This matter was carried in appeal by way of an intra Court appeal and a Hon'ble Division Bench, in and by common order dated 20.03.2019 in Writ Appeal No.391 to 402 of 2019 (reported in 2019 4 MLJ 129), reversed the order of Hon'ble Single Judge and held in favour of Revenue. The Assessees carried the matter to Hon'ble Supreme Court and this Court is informed that in the batch of petitions, the lead matter is SLP(C) No.10456 of 2019. This batch of petitions are pending in Hon'ble Supreme Court and the order made by Hon'ble Supreme Court on 02.07.2019 reads as follows:

ITEM NO.29+58 COURT NO.11 SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 13044/2019

(Arising out of impugned final judgment and order dated 20-03-2019 in WA No. 598/2019 passed by the High Court Of Judicature At Madras)

THE IMMACULATE CONCEPTION SOCIETY MADURAI Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)
(FOR I.R. and IA No.83343/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.83345/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH
SLP(C) No. 13562/2019 (XII)
(FOR I.R. and IA No.87413/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.87414/2019-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.87415/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13481/2019 (XII)
(FOR I.R. and IA No.86716/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.86717/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13422/2019 (XII)
(FOR I.R. and IA No.86121/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.86122/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13683/2019 (XII)
(FOR I.R. and IA No.88383/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.88384/2019-PERMISSION TO FILE SYNOPSIS AND LIST OF DATES and IA No.88385/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13406/2019 (XII)
(FOR I.R. and IA No.85984/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.85982/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13217/2019 (XII)
(FOR I.R. and IA No.84902/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.84903/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13246/2019 (XII)
(FOR I.R. and IA No.85000/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.85001/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13330/2019 (XII)
(FOR I.R. and IA No.85549/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.85551/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13212/2019 (XII)
(FOR I.R. and IA No.84831/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.84834/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13519/2019 (XII)
(FOR I.R. and IA No.87044/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.87045/2019-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.87048/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13332/2019 (XII)
(FOR I.R. and IA No.85564/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.85566/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13550/2019 (XII)
(FOR I.R. and IA No.87329/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.87330/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13541/2019 (XII)
(FOR I.R. and IA No.87253/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.87254/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13328/2019 (XII)
(FOR I.R. and IA No.85543/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.85544/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13567/2019 (XII)
(FOR I.R. and IA No.87447/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.87448/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13543/2019 (XII)
(FOR I.R. and IA No.87273/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.87275/2019-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.87277/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13490/2019 (XII)

(FOR I.R. and IA No.86745/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.86746/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13821/2019 (XII)
(FOR I.R. and IA No.89820/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.89821/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13667/2019 (XII)
(FOR I.R. and IA No.88189/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.88190/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13689/2019 (XII)
(FOR I.R. and IA No.88454/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.88453/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13526/2019 (XII)
(FOR I.R. and IA No.87122/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.87121/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13618/2019 (XII)
(FOR I.R. and IA No.87807/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.87808/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13574/2019 (XII)
(FOR I.R. and IA No.87546/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.87547/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13390/2019 (XII)
(FOR I.R. and IA No.85898/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.85902/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13562/2019 (XII)
(FOR I.R. and IA No.87349/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.87350/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13569/2019 (XII)
(FOR I.R. and IA No.87499/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.87504/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13545/2019 (XII)
(FOR I.R. and IA No.87294/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.87295/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13542/2019 (XII)
(FOR I.R. and IA No.87255/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.87257/2019-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.87259/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13527/2019 (XII)
(FOR I.R. and IA No.87130/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.87131/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13581/2019 (XII)
(FOR I.R. and IA No.87586/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.87587/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13546/2019 (XII)
(FOR I.R. and IA No.87309/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.87310/2019-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.87311/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13772/2019 (XII)
(FOR I.R. and IA No.89111/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.89113/2019-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.89116/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13693/2019 (XII)
(IA No.88509/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.88510/2019-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.88513/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13698/2019 (XII)
(FOR I.R. and IA No.88520/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.88522/2019-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.88523/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13793/2019 (XII)
(FOR I.R. and IA No.89552/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.89555/2019-PERMISSION TO FILE SYNOPSIS AND LIST OF DATES and IA No.89556/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13713/2019 (XII)
(FOR I.R. and IA No.88686/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.88687/2019-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.88688/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 13756/2019 (XII)
(FOR I.R. and IA No.89233/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.89234/2019-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.89235/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH
SPECIAL LEAVE PETITION (C) NO. 14197/2019
(EXEMPTION FROM FILING CERTIFIED COPY OF IMPUGNED ORDER)

Date : 02-07-2019 These petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s)
Mr. Arvind P. Datar, Sr. Adv.
Fr. Xavier Arulral, Sr. Adv.
Mr. Munawwar Naseem, Adv.
Ms. A. Arul Mary, Adv.
Mr. Dhiraj A. Philip, Adv.
Mr. Ahamad Abraham, Adv.
For M/S. Dua Associates

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

Issue notice.

In the meanwhile, status quo with regard to payment of tax, as on today, shall be maintained by the parties.

List the matters on 7th August, 2019.

Tag with SLP (C) No. 10456/2019.

Liberty is granted to amend the cause title in SLP (C) No. 13246/2019.

(MEENAKSHI KOHLI)
COURT MASTER

(RENU KAPOOR)
COURT MASTER

5. When things stand as above i.e., in the aforesaid obtaining factual backdrop, impugned communication dated 07.10.2015 bearing reference C.No.Misc.PRO/2015-16 followed by Circular dated 26.10.2015 bearing reference R.C.No.23545/2014/E1 has been assailed in captioned matter as petitioner (4 staff to be precise) could not join the earlier aforementioned trajectory qua legal proceedings and that has necessitated the filing of captioned writ petition is learned senior counsel's say.

6. Ms.Hema Muralikrishnan, learned senior standing counsel accepts notice on behalf of the respondents 1 to 3, Mr.Karthik Ranganathan, learned senior standing counsel for Income Tax Department accepts notice on behalf of fourth respondent and Mr.NRR.Arun Natarajan, learned Government Advocate, (represented by Ms.Amirta Dinakaran, learned State counsel) accepts notice on behalf of respondents 5 to 8.

7. From the narrative thus far, it becomes clear that the Hon'ble Supreme Court is in seizin of the question as to whether salaries payable to nuns would attract TDS qua IT Act. It is also clear that Hon'ble Supreme Court has made an interim order of status quo with regard to payment of tax. Tobe noted, this Court is informed (without any disputation or disagreement) that the aforementioned interim order made by Hon'ble Supreme Court is now operating and Hon'ble Supreme Court is in seizin of the main issue.

8. In the light of the narrow compass with the consent of all the aforementioned learned senior counsel and State counsel, the captioned main writ petition was taken up. There is no disputation or disagreement before this Court that aforementioned SLP i.e., lead SLP and all the connected SLPs are pending in the Hon'ble Supreme Court and Hon'ble Supreme Court is in the seizen of these matters. Likewise, there is no disputation or disagreement that aforementioned interim order made by Hon'ble Supreme Court on 02.07.2019 is still operating. This takes us to a scenario wherein the parties i.e., assessee as well as Revenue/State should await outcome or await verdict of Hon'ble Supreme Court on this issue. There is no disputation or disagreement that the parties have to await outcome i.e., verdict of Hon'ble Supreme Court.

9. Therefore, captioned writ petition is disposed of holding that the impugned communication dated 07.10.2015 bearing reference No.Rc.No.23545/2014/E1 and circular dated 26.10.2015 issued by fifth respondent will be kept in abeyance and there will be an interim order on the same lines as made by Hon'ble Supreme Court i.e., order of status quo with regard to payment of tax as of today.

10. Though obvious, whether the impugned communication and circular get resuscitated or concluded by being set aside will depend on the verdict that Hon'ble Supreme Court returns.

11. Though obvious, it is made clear that this Court has not expressed any opinion or view on the merits of the matter and the captioned writ petition is disposed of solely on the basis that Hon'ble Supreme Court is in seizin of the matter, interim order made by Hon'ble Supreme Court is operating and the parties should await the verdict of Hon'ble Supreme Court. There are four staff members who could not join the proceedings which are now pending in the Hon'ble Supreme Court that has led to the present scenario as already alluded to supra in this order.

12. Captioned writ petition disposed of in the aforesaid manner with the aforesaid directives. Though obvious, it is made clear that this arrangement (status quo with regard to payment of tax) and notice/circular being kept in abeyance will operate till the disposal of matter by Hon'ble Supreme Court. Consequently, connected WMP.Nos.23004 & 23005 of 2021 are also disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmi/nsa

To

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

2. The Secretary,
Central Board of Direct Taxes,
Ministry of Finance,
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3. The Principal Chief Commissioner
of Income Tax (Chennai),
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8. The Director of Teacher Education
Research and Training,
DPI Campus, College Road,
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+1cc to Ms.Hema Muralikrishnan, Advocate, S.R.No.54008
+2ccs to M/s.Father Xavier Associates, Advocate, S.R.No.54130

W.P.NO.21815 OF 2021 &
W.M.P.NOS.23004 & 23005 OF 2021

PA(CO)
PBS/25/11/2021