BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2016

CORAM

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

W.P(MD).Nos.21172 to 21181 of 2015 and W.P(MD).Nos.21382, 21383, 21069, 21070 to 21072 and 21491, 21789 to 21803 of 2015 and 21990 to 22000 of 2015 and 22027, 22257 to 22268 of 2015 and 23257 to 23260 of 2015 and M.P(MD).Nos.1 and 2 of 2015 in all W.Ps. And 1914 of 2016 and 2185, and WMP(MD).No. 1666 and 1667 of 2016 and WMP(MD).No.1895 and 1896 of 2016 and W.P(MD).No.2915, 2919 of 2016 and W.M.P(MD).No.2572 to 2580 of 2016 and WP(MD).No.2573 to 2581 of 2016 and W.P(MD).No.4307 to 4310 of 2016 and 4262 of 2016 and WMP(MD).No.3836 to 3843 of 2016 in W.P(MD).Nos.4307 to 4310 of 2016 and WMP(MD).No.3798 and 3799 of 2016 in WMP(MD).No.4262 of 2016 and W.P(MD).No.4311 of 2016 and WMP(MD).No.3844 and 3855 of 2016 and W.P(MD).No.4467 to 4478 of 2016 and WMP(MD).Nos.4011 to 4034 of 2016 in W.P(MD).Nos.4467 to 4478 of 2016 **(85 cases)**

The Correspondent,
Holy Cross Primary School,
Goldenrock – 620 004 ... Petitioner

Vs.

1. The Central Board of Direct Taxes,
   rep. by its Chairman,
   Room No.155 A, North Block,
   New Delhi – 110 001

2. The Principal Chief Commissioner,
   of Income Tax, Tamil Nadu
   No.121, Mahatma Gandhi Road,
   Chennai – 600 034

3. The Income Tax Officer,
O/o the Principal Chief Commissioner,
of Income Tax, Tamil Nadu,
No.121, Mahatma Gandhi Road,
Chennai – 600 034

4. The Director of Treasuries and Accounts,
Saidapet, Chennai – 600 015

5. The Pay and Accounts Officer,
Treasuries and Accounts Department,
Chennai – 600 001

6. The District Treasury Officer,
Collectorate Campus,
Tiruchirapalli.

7. The District Elementary Educational Officer,
Thiruchirapalli – 620 020

8. The Assistant Elementary Educational Officer,
Thiruchirappalli – 620 020 ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue of writ of certiorari calling for the records relating to the impugned proceedings issued by the second respondent in Letter C.No.Misc/PRO/2015-16 dated 07.10.2015 and the consequent circular of the 4th respondent Director of Treasuries and Accounts in RC.No.23545/2014/E1 dated 26.10.2015 insisting upon the petitioner to deduct Income Tax (TDS) from the salaries of the Religious Nuns in the service of the petitioner's school (name list annexed), quash the same, in so far as the petitioner's school is concerned.

For Petitioners ... Mr. Isaac Mohanlal
(in all W.Ps. Except W.P.No.4262/2016)
For petitioner .... Mr. D. Anbarasu
(in W.P.No.4262/2016)

For R1 to R3 .. Mr. R. Krishnamoorthy
For R4 to R8 .. Mr. K. Chellapandian, AAG
Assisted by Mr.D. Muruganantham, AGP
in all cases.
Mr. P. Gunasekar for R5 in WP.4309/2016
and R4 in W.P(MD).No.4310 of 2016

COMMON ORDER

These Writ Petitions have been filed praying to call for the records relating to the impugned proceedings issued by the second respondent in Letter C.No.Misc/PRO/2015-16, dated 07.10.2015 and the consequent circular of the 4th respondent Director of Treasuries and Accounts in RC.No.23545/2014/E1 dated 26.10.2015 insisting upon the petitioner to deduct Income Tax (TDS) from the salaries of the Religious Nuns in the service of the petitioners' school and quash the same.

2. By consent, all these cases are taken up for final disposal.

3. The only point which has been raised in all these Writ

Petitions is that all these petitioners are in Catholic Institutions, religious Priests and Nuns who have been employed in the respective Schools/Colleges owned and administered by Dioceses, Congregation or institutions. The only point which is raised is whenever salaries are directly paid by the Government to the concerned religious Priests or Nuns, who are working in the schools owned by Catholic Dioceses and Congregation, TDS is sought to be deducted, whereas the concerned religious Priests and Nuns do not take the salary as their individuals salaries instead they are depositing the same to the concerned Diocese or Congregation or institution only. Therefore, they have no personal link in so far as the salary received from the Government is concerned. Some of the Institutions, Congregations or Dioceses are already exempted by the Income Tax Department from payment of income tax. Therefore, the salaries given to the Priests and Nuns when they are added to the income of the said Congregation or Diocese it is not taxable where such income from the religious Priests and Nuns now, added to the congregation income they become non-taxable. Whereas, when it is received by the concerned Priests or Nuns in their individual name, TDS is sought to be deducted by the institution but ultimately the income is being only added to the Diocese which is exempted from income tax. Therefore, it goes without saying that the ultimate beneficiaries are the congregation or Diocese, since payment of Tax has been exempted for them the salary of the Priests and Nuns received from government should not be deducted towards TDS under Section 40.

4. It is pointed out that right from 1944, the Income Tax so far as received by the Priests and Nuns are sought to be exempted. When the Act came in the year 1961, in 1977, a resolution has been passed by the Income Tax Department to this effect. Similarly, the parties have also relied upon the communication of the income Tax Department pursuant to Division Bench order seeking for exemption. Therefore, the only contention is that the TDS should not be deducted insofar as to the religious Priests and Nuns salary, which have been paid by the Government. Now, they would contend that every individual Father or Sister or the religious Priests or Nuns are preferred to file an affidavit before the Income Tax Department and to the concerned District Educational Officer, District Elementary Educational Officer, Government of Tamil Nadu, Pay and Accounts

Officer and Accountant General. Since the ultimate beneficiaries are the congregation or Diocese, which is already exempted from the purview of the Income Tax that their Salary by the Government need not be paid directly to them. The salary could be directed to be paid to the respective congregation without deducting TDS, so that the entire amount will go to the congregation which is already exempted from payment of Tax and the individuals also have the benefit of it. It was represented before Income Tax Department as well as the Government that they will not have any claim, if the amount is directly paid to the said congregation. Therefore, in view of this undertaking they would now only contend that the common order be passed in all these petitions.

5. The Income Tax Department is represented by the learned counsel Mr.R. Krishnamoorthy and Mr.D. Muruganantham, learned counsel representing on behalf of the Government of Tamil Nadu.

6. The Income Tax Department has stated that the congregations as on date which have got the exemption alone are

entitled to Tax exemption and the present congregations are the Diocese, which have not been exempted from the purview of the Income Tax are not eligible to seek such exemption. The learned Additional Advocate General brought to the knowledge of this Court that they have no objection in respect of the payment of salary directly to the congregation or Diocese, provided individual users have to file affidavits before them as well as Income Tax Department. At the same time, the Department Viz., Income Tax Department, on the basis of affidavit filed by the individuals has to give a letter to the Government exempting them from deducting the TDS insofar as it relates to the salary fo the Priests and Nuns which are being directly paid to the Diocese or Contregation concerned.

7. In view of that matter, they have no objection to effect payment of salary directly to the concerned congregation or Diocese Priest or Nuns.

8. Heard all the parties.

9.There is no controversy in regard to the deduction to be made towards payment of TDS from the salary of Priests and

Nuns. What is now sought for in all the Writ Petitions is that when the individual Priests and Nuns are not taking the salary for their personal use but when they are giving it to the respective Congregation or Diocese only and when the institution is already exempted from payment of income tax, why the salary which is given to the individuals should be deducted for TDS as the ultimate beneficiary is only the Diocese or the Congregation which has already been exempted from payment of income tax. They are now sticking upon the only point that none of the Priests and Nuns though they work under the Government and receive the salary as teaching or non-teaching staff or in any other capacity, they are not utilising the salary in their individual capacity but they are only giving it to the Congregation or Diocese. Under these circumstances, let me summarize even the stand of the department from the beginning even before the advent of the income tax right from 1944. In fact, a circular was issued by the Government in Circular No.1 of 1944 V.No.26(43)-IT/43, dated 24.01.1944 in which the liability to tax on the fees received by the missionaries and subsequently made over to the society had been considered. This Circular has been considered subsequently by the Central Board of Direct Taxes in the year

1977 in their proceedings dated 5th December, 1977 which I will refer it to later. When the Act came into force in 1971 as early as in 1963, the Government of India in a communication issued by the Commissioner of Income Tax, Bombay City in reference No.Dat/284 (287)/60, which is addressed to one of the Solicitors in Bombay, it has considered the claim made by the Rev. Fr. Valeria Godinho regarding exemption from payment of income tax for the Priests of the Archdiocese, Bombay. In that letter, it has been stated as follows:

> *It has been decided in the case of Rev.Fr.Valeria Godinho that the Departmental appeals filed be withdrawn. Incase where amount received by Priests as salary are subject to an overriding title by their conditions and rules of service, to be passed over to the Church authorities (whose income is exempt from tax) such amounts will not be liable to be taxed.*

Therefore, immediately after the advent of the very Act itself way back in the year 1963 the Government of India thought it fit to withdraw the appeal filed by the department as against the deduction of payment of tax on the salary of Priests of the Archdiocese of Bombay.

10.Thereafter, the Commissioner of Income Tax, Madras, in his proceedings in R.C.No.230..11(75), dated 30.01.1969 addressed to the Secretary, Madras Catholic Educational Council on the representation of the council for exemption of the emoluments drawn by the Priests or Nuns employed in the religious educational institutions has categorically stated as follows:

> *It has been stated that in cases where the amount received by Priests and Religious as salary are subject to an overriding title by their conditions, and rules and service to be passed over to the chruch authorities (whose income is exempted from tax) such amounts will not be liable to be taxed.*

Therefore, the income tax department even in the year 1969 has clearly considered that once the salary received by the Priests and religious institution staff are only paid or to be passed it over to the Church authority, whose income tax is exempted from tax that amount will not be taxed. In that very letter itself a note has also been appended that in the light of the communication cited the religious members employed in schools are exempted from payment of professional tax as well.

11.Thereafter in an instruction by the Government of India made in reference F.No.200/88/75-IT (A1), dated the 5th December, 1977, considered the Circular No.1 of 1944 V.No.

26(43)-IT/43, dated 24.01.1944. In that instructions, the question for consideration was whether the fees or other earnings when the same is made over to the Congregation to which they belong under the rules thereof is liable to be taxed. The Central Board of Taxes, has concluded as follows:

> *3. The Board have examined this issue and have decided that since the fees received by the missionaries are to be made over to the congregation concerned there is an over-riding title to the fees which would entitle the missionaries to exemption from payment of tax. Hence such fees of earning are not taxable in their hands.*

Therefore, way back on 05.12.1977 itself the Board of Tax Department itself has clearly stated that when it reaches the Congregation such fees or earnings are not taxable.

12.Therefore, from the year 1944 to 1977, the Income Tax Department on various occasions have categorized that even the Income earned by the Missionaries are exempted from Tax. Now, under Section 192, there is a mandatory provision where the employer has to deduct TDS from the salary. Therefore, it is necessary on the part of the employer to deduct tax at source. Insofar as Catholics Priests and Nuns are concerned the salary received by them is not enjoyed by them independently. They work for the Congregation in their respective status as Teacher or any other capacity by virtue of their status as a Priest and Nuns but having been duly appointed as teacher or any other capacity in the institutions. They receive the salary but they pass it on to the Diocese according to them. If the money is directly paid to the individuals, necessarily TDS has to be deducted. But, the amount is being paid by them to the congregation which is the ultimate beneficiary, which has already been exempted from payment of Tax and therefore unnecessarily TDS should not be deducted. Therefore, they have come forward with these writ petitions.

13.This Court specifically asked the petitioner counsel that whether they are willing to give necessary undertaking to both department as well as the State Government to the effect that when the income is directly given to the Congregation or the Diocese, they will not have any further claim and such salary directly paid would be deemed to be a full satisfaction for the payment of money to the respective Priests and Nuns. In fact, the counsel has specifically stated that they have agreed to file necessary affidavit or letters to say that inspite of bringing the salary in the individual name of the Priests and Nuns it would be directly paid to the concerned Congregation and they are ready to send the letter to all the officers concerned viz., the Income Tax Department and to the concerned District Educational Officer, District Elementary Educational Officer, Pay and Accounts Officer and Accountant General.

14.The learned counsel for the Income Tax also stated that when the ultimate beneficiary is the Congregation which has already been exempted from payment of income tax definitely there need not be a deduction of TDS. But of course, the money should have to be given directly only to the Congregation and not to the individuals. In this connection, it is also pertinent to point out that when the Government directly pays to the concerned Congregation or Diocese which has already been exempted from payment of tax, naturally there cannot be any evasion of tax and as I have rightly pointed, in this connection, already the department has taken a stand way back in the year 1944 to the circular in 1977 whenever ultimately the beneficiary is the Congregation which has been exempted then they need not pay tax. In this connection, a reference is also made to a Division

Bench judgment of the Kerala High Court in an identical matter wherein also interim order has been passed but a reference has been made to place this matter before the Central Board of Direct Taxes but no further orders have been brought to the notice of this Court. But as he stated even the Central Board of Direct Taxes itself way back in the year 1977 have considered such an issue and come to the conclusion that it is not taxable for the Nuns. In view of the same, to set at naught all the anomalies, this Court passes the following orders:

(1) Every individual viz., Priests or Nuns has to specifically give an undertaking affidavit to the Income Tax Department that his/her entire salary as a teacher/non teaching staff or in any other capacity has to be paid by the Government directly to the Congregation or Diocese, to which he belongs which has already been exempted from payment of income tax.

(2) Similar affidavit will also be filed before the Government of Tamil Nadu, Joint Director of Collegiate Education, District Education Officer, District Elementary

Education Officer, and Pay and Accounts Officer, by the congregation and the individuals and the affidavit to be filed within a period of two weeks from the date of receipt of a copy of this order. It is also made clear that this order will only enure to the benefit of those Congregation or Diocese who have already obtained exemptions from the Income Tax Department.

(3) In the said affidavit, they will also state that all the payment made by the Government directly to the Congregation or Diocese is in full satisfaction of their salary as claimed by the schools and they will not have any further claim insofar as the payment of salary to them as it is directly made to the Congregation or Diocese. As according to them, it is the ultimate, final beneficiary which is receiving the salary.

15. It is made clear because the the Government is paying authority, the Income Tax Department on receipt of such affidavit and on their satisfaction would give a certificate or a letter to the Government of Tamil Nadu that they need not deduct TDS insofar

as the Priests and Nuns are concerned because they are not paying salary to the individual which are now being paid only in the name of the Congregation or Diocese only.

16. In view of the above, all the Writ Petitions are allowed as stated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

03.03.2016

Index :yes/No
Internet:yes/No
trp/srm

To

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   rep. by its Chairman,
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B. RAJENDRAN, J.,

trp/srm

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03.03.2016

In these facts and circumstances, let me narrated from beginning even before the advertent of the income Tax Act right from 1944. The exemption insofar as the payment of Income Tax for the salary being paid to the religious Priests and Nuns has been made in Circular by the Government. At that point of time in Circular No.1/1944, dated 24.01.1944, where advertence received by the Missionaries and subsequently made over to the Society has been considered and a order has been passed on 05.12.1977. Pursuant to that after following the Act, reference under the Central Board of Director Taxes in Ref.F.No.200/88/75-IT, dated 05.12.1977, an order has been passed as follows:-

> *2. Representations have been received from the members of religious congregations all over the country regarding the taxability of the fess received by them. The question for consideration is whether the fees or the other earning the same is to be made over to the congregation to which they belong under the rules thereof.*

9. Coupled with this, after Advertent of the Act, 1961 even as early as 26th June 1963 in a communication issued by the

Commissioner of Income Tax, Bombay City-1, seeking for exemption from Income Tax of Priests or Nuns or Church Diocese, it has been clearly stated as follows:-

Therefore, right form the beginning the Commissioner of Income Tax, Madras by proceedings dated 30.01.1969 has been passing a similar order:-

10. Therefore, when this Court posed a specific question that when the ultimate beneficiaries are congregations having been exempted from the income Tax for all their incomes, what is the necessary for payment of the TDS insofar as the Income, which is routed through the person, who is the member of congregation. For which, the learned counsel for the income Tax directly received communication from the Government that to the

congregation, TDS may not be applicable which is the earning of the individual. Ultimately, the Court has to say whether Tax is evaded at any point of time. In fact they were directed from employer. The Government directly pay to the congregation, which is already exempted and naturally there is no course of taxation at all and the individual has to file a specific undertaking before the Income Tax Officer, as well as to the Government that the individual has has no objection for the payment of salary directly to the congregation. In that view of the matter this Court comes to the conclusion that TDS may not be deducted insofar as the payment of the religious Priests and Nuns of the Catholic institutions who are attached to the respective congregation or Dioceses and insofar as those congregation or Diocese who are already exempted from the purview of the Income Tax as on this date following orders are passed: