
(1998) 08 KL CK 0036
In the High Court Of Kerala
Case No : O.P. No. 9584 of 1997-N

Thyaka Trust

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 03-08-1998

Acts Referred:

Kerala Agricultural Income Tax Act, 1991 — Section 12A, 16, 16(10), 16(13), 16(9)

Citation : (1999) 152 CTR 63 : (1999) 236 ITR 185

Hon'ble Judges : G. Sivarajan, J

Bench : Single Bench

Advocate : Ramesh Cheriyan John, for the Appellant; V.M. Kurian, Senior Government Pleader, for the Respondent

Judgement

G. Sivarajan, J.—The matter arises under the Kerala Agricultural Income Tax Act, 1991 (hereinafter referred to as "the Act"). The question involved herein relates to the issuance of a notification as provided u/s 9(2) of the Act. The petitioner is a trust constituted by a deed of trust dated April 24, 1986 (exhibit P-2). It is registered as a charitable trust u/s 12A of the Income Tax Act, 1961 (exhibit P-I). It is stated that the trust was constituted for helping the poor and needy in rural areas. The main objects of the trust as stated in clause VI of the trust deed are as follows :

- "1. Provision of shelter, clothing and food to the poor.
2. To grant relief and aid to persons affected by natural calamities.
3. To grant aid or financial assistance in connection with the education and advancement of education.
4. To render medical aid to the poor and the needy.
5. To accept donations and grants and to deal with same for the purpose of the trust.
6. To lease or otherwise for charitable purpose and to construct buildings

thereon."

2. It is stated that pursuant to the said objects, the petitioner has been contributing to the welfare of the poor and needy right from its inception and has also constructed houses for the poor and the needy in rural areas. Further it has been conducting several medical camps such as eye camps, dental camps, cancer detection camps, etc., every year free of cost. It is stated that the petitioner-trust is given the benefit of exemption u/s 80G of the Income Tax Act, 1961, from its inception and that as per Section 80G, if any donation is made to any fund or any charitable institution, certain deductions are allowed from the total income of the persons making such donations for the purpose of computing his taxable income. To get the benefit of Section 80G of the Income Tax Act, the trust or fund has to make an application to the Commissioner of Income Tax. If the Commissioner of Income Tax is satisfied that the applicant has complied with the conditions laid down in Sub-section (5) of Section 80G, exemption certificate will be granted. It is stated that since the petitioner had complied with all the conditions specified in Sub-section (5) of Section 80G of the Income Tax Act, it has been granted exemption certificate first on February 17, 1987, for the years 1987-88 to 1988-89 (exhibit P-3) and it was renewed up to the year 1997-98 as per exhibits P-4, P-5, P-6 and P-7.

3. It is stated that the Kerala Agricultural Income Tax Act, 1991 (Act 15 of 1991), has introduced a provision in Section 9(2) of the said Act providing for exemption of funds made to trusts established for charitable purposes and notified by the Government in this behalf in the Gazette. As per Section 9(2) of the Act, in computing the total agricultural income of a person, there shall be deducted from his agricultural income any sum not exceeding one-sixth of the total agricultural income of the assessee or twenty thousand rupees, whichever is less, paid by him in the previous year out of his agricultural income as donation to a trust, institution or a fund established for charitable purposes and notified by the Government in this behalf in the Gazette.

4. In view of the above said Section, the petitioner-trust made an application (exhibit P-8) before the Minister of Finance on November 30, 1991, for issuing a notification u/s 9(2) of the Act in the Official Gazette. It is stated that along with the said application, the petitioner had produced the copies of the trust deed, copies of the exemption certificate issued u/s 80G of the Income Tax Act, 1961, and copies of the annual statement of accounts for the years up to March 31, 1991. It is also stated that the said application was forwarded by the Finance Minister to the Secretary to Government, Taxes Department. The said application was rejected by the Government by a communication dated September 30, 1996, (exhibit P-9). The petitioner has filed this original petition challenging exhibit P-9, communication issued by the second respondent. The petitioner has also sought for a direction to the respondents to allow the petitioner the benefit of notification contemplated u/s 9(2) of the Agricultural Income Tax Act as claimed in the petition.

5. The petitioner's case is that the petitioner is a charitable institution established for the benefit of the poor and needy, that it has been registered as a charitable trust u/s 12A of the Income Tax Act, and that it has been granted exemption certificate u/s 80G of the said Act. The petitioner's further case is that, in view of these documents issued under the Central Income Tax Act, the respondents should have notified the petitioner-trust as contemplated u/s 9(2) of the Kerala Agricultural Income Tax Act, 1991, to encourage the assesseees under the said Act to make donations to the trust and to avail of the benefit provided under the said Act. It is stated that the only condition for issuing the notification is that it should be a charitable institution which is clear from exhibits P-2 to P-7 certificates issued under the Income Tax Act, 1961. The grievance of the petitioner is that the second respondent rejected the request made by the petitioner without assigning any reason.

6. A counter-affidavit is filed on behalf of the respondents. It is stated that in order to get the benefit of Section 9(2), the trust should have been registered under the Agricultural Income Tax Act, 1991, and that since the petitioner-trust was not registered under the said Act, the Government was fully justified in rejecting the application for issuance of the notification. The stand taken by the respondents is that as per Section 16(10) of the Agricultural Income Tax Act, 1991, any trust or institution created for charitable or religious purposes may make an application in the prescribed form and in the prescribed manner to the Deputy Commissioner of Agricultural Income Tax within six months from the date of commencement of the Act or from the date of creation of the trust or institution, whichever is later, along with a copy of the instrument creating the trust or the bye-laws of the institution, as the case may be, for registration. It is further stated that in the instant case, the Deputy Commissioner, Kottayam, had conducted an enquiry and reported that the trust does not have any office at Kallarackal Buildings, M. E. Road, Kottayam, and it does not have any landed property. On that basis, it is stated that the trust does not, therefore, appear to be a bona fide one and the intention behind the request is to raise money under the cover of notification exempting the donations made to the trust from agricultural Income Tax. It is further stated that it is only after considering all these aspects the Government had given exhibit P-9 reply to the petitioner.

7. A reply-affidavit is filed by the petitioner. It is stated in the said reply that Section 9(2) of the Act does not contemplate any registration under the Agricultural Income Tax Act for getting the benefit of notification for exemption and that the only requirement for getting the benefit u/s 9(2) is that the petitioner should be a trust, institution or fund established for charitable purposes. It is stated that the documents, exhibits P-1 to P-7, will clearly show that the petitioner is a charitable trust and that the averments to the contrary contained in the counter-affidavit are baseless and are made without application of mind. Regarding the application of Section 16(10) of the Agricultural Income Tax Act, it is stated that the registration contemplated u/s 16(10) of the Act is for the purpose of getting the exemption u/s 16, that the compliance of the said Sub-

section is required only for getting exemption for any agricultural income derived from any property held by it under trust and that since the petitioner does not hold any property from which agricultural income is derived, the requirement of complying with Section 16(10) of the Act does not arise, It is also stated that u/s 16 of the Act exemption from income is granted to a trust or any charitable institution, but u/s 9(2) the exemption is granted to any assessee making contribution to any trust or charitable institution provided the trust or institution is notified by the Government in the Official Gazette. It is stated that the provisions of Sections 16 and 9(2) are different and are mutually exclusive. It is also stated that Section 9(2) of the Act does not contemplate the application of Section 16(10). It is further stated that the statement made in the counter affidavit that the Deputy Commissioner made enquiry and reported that the trust does not have any office at Kallarackal Buildings is false and is denied. It is stated that exhibits P-1 and P-3 to P-7 communications were issued to the petitioner in the said address and the same was received by the petitioner. Further, exhibit P-9 order dismissing the application for notification was also communicated to the office of the petitioner and that too received at its office at Kallarackal Buildings, Miss East Road, Kottayam.

8. Sri Ramesh Cheriyan John, learned counsel appearing for the petitioner, submitted that Section 9(2) of the Agricultural Income Tax Act. 1991, contemplates notification by the Government of a trust, institution or fund established for charitable purposes for availing of the benefit of the said Sub-section by an assessee under the Act and, therefore, if such an application is made by a trust, institution or fund established for charitable purposes, the Government is bound to consider the said request and take a decision thereon. Learned counsel also submitted that the Government has to exercise the said power in accordance with law with notice and opportunity to the petitioner and that, in the instant case, the Government failed to consider the application made by the petitioner in accordance with law. Learned counsel further submitted that the Government was bound to pass a reasoned order for rejecting the said application and that exhibit P-9 communication does not disclose the reasons for such rejection. Learned counsel also submitted that exhibit P-2 trust deed and exhibits P-1 and P-3 to P-7 certificates issued by the Central Government Income Tax Department will clearly establish that the petitioner is a charitable institution entitled to be notified by the Government as provided u/s 9(2) of the Act. Learned counsel further submitted that the alleged enquiry by the Deputy Commissioner has been conducted behind the petitioner, that the Government did not inform the petitioner of the result of the alleged enquiry by the Deputy Commissioner and that this by itself has vitiated the entire proceedings. He submitted that the Government did not act fairly, reasonably and in accordance with law. He also submitted that the application submitted by the petitioner has been dealt with in an arbitrary and mechanical manner. Counsel further submitted that Section 9(2) of the Act does not in terms provide for registration of the petitioner-trust as a charitable institution for issuance of a notification

contemplated under the said Sub-section. He submitted that the Government was not justified in reading into the said Sub-section the requirement of the provisions of Section 16(10) of the Act. He also submitted that if the Legislature had intended that for issuing a notification u/s 9(2) registration u/s 16(10) of the Act was necessary, it should have been so specified in the said Sub-section itself and that in the absence of such an intention expressed in Section 9(2) itself, the Government was not justified in taking the view that a registration u/s 16(10) is necessary for making an application u/s 9(2) of the Act. In support of his contention, learned counsel relied on the decision of the Delhi High Court in Commissioner of Income Tax Vs. Cement Distributors Ltd., . He also relied on the decision of the Supreme Court in Keshavji Ravji and Co. v. CIT : [1990]183ITR1(SC) , and also the Law of Income Tax by Sampath Iyen-gar, 9th edition., volume I, page 158, in support of the above.

9. The learned Government Pleader appearing for the respondents submitted that Section 16 of the Agricultural Income Tax Act, 1991, is the relevant provision which deals with charitable trusts and institutions and that the said Section not only deals with charitable trusts and institutions which are assesseees under the Act but also deals with such institutions which are entitled to other benefits available under the Act. He further submitted that the machinery for adjudication of the question as to whether a trust or institution is a charitable one or not is provided only in Section 16 and that only such of those institutions which have been declared to be charitable trusts or institutions which can apply for and obtain a notification by the Government in the Gazette declaring them as such. The learned Government Pleader accordingly submitted that the Government is entitled to issue notification contemplated u/s 9(2) of the Act only if a trust or institution is adjudicated to be a charitable one in proceedings u/s 16 of the Act, He submitted that there is no warrant for the interpretation made by the petitioner to Section 9(2) of the Act and that there is nothing wrong in understanding Section 9(2) by the Government as obliging the trust which claims for issuance of a notification as contemplated under the said Sub-section to get the said institution registered as a charitable institution as provided under Sub-section (10) of Section 16. According to learned Government Pleader, Section 16(10) provides a machinery for adjudication of the question as to whether a trust or an institution is a charitable one or not. Section 16(9)(c) of the Act defines "charitable purposes". The learned Government Pleader accordingly submitted that the Government was perfectly justified in declining the relief sought for by the petitioner by exhibit P-9 communication.

10. I have considered the rival submissions. The petitioner, according to it, is a trust created for charitable purposes, namely, relief of the poor and needy as per exhibit P-2 trust deed and it has been registered as a charitable trust under the provisions of Section 12A of the Income Tax Act, evidenced by exhibit P-I. It has also applied for and obtained exemption certificate as contemplated u/s 80G of the Income Tax Act as per exhibits P-3 to P-7 for the period up to and inclusive of 1997-98. The petitioner, immediately after the commencement of the Act, it is

stated, has applied to the Minister for Finance for issuance of a notification in the Gazette as contemplated u/s 9(2) of the Agricultural Income Tax Act, 1991, and the same was forwarded to the Secretary to the Government in the Tax Department which was disposed of as per exhibit P-9 communication. Exhibit P-9 communication admittedly has not assigned any reason for the rejection of the said application. It only says that the request of the petitioner-trust to issue a notification to the effect that donations paid to them are eligible for deduction u/s 9(2) of the Agricultural Income Tax Act, is not acceptable to Government. The reason for such rejection is explained only in the counter-affidavit filed on behalf of the respondents. The reason stated is that in order to enable the Government to issue a notification as contemplated u/s 9(2) of the Act the petitioner has to get the trust registered as contemplated u/s 16(10) of the Act and that since the petitioner has not got itself registered as above, it is not eligible for the notification u/s 9(2) of the Act. It is also stated in the counter-affidavit, as already mentioned, that an enquiry was conducted in the matter through the Deputy Commissioner of Sales Tax and that it has been found that the petitioner-trust does not have any office at Kallarackal Buildings, M. E. Road, Kottayam, and that it does not have any landed property and, therefore, the bona fides of the petitioner-trust also are doubted.

11. In order to enable this court to enter a finding on the legality of exhibit P-9 communication, it is necessary to refer to the relevant provisions of the Act. Section 9(2) of the Act providing for issuance of notification reads as follows :

"(2) In computing the total agricultural income of a person there shall be deducted from his agricultural income any sum not exceeding one-sixth of the total agricultural income of the assessee or twenty thousand rupees, whichever is less, paid by him in the previous year out of his agricultural income as donation to a trust, institution or a fund established for charitable purposes and notified by the Government in this behalf in the Gazette."

12. Section 16 of the Act dealing with charitable trusts and institutions reads as follows :

"16. Charitable trusts and institutions.--(1) Subject to the provisions of this Act the total agricultural income of any charitable trust does not include,--

(a) any agricultural income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in the State ; and, where any such income is accumulated or set apart for application to such purposes in the State, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent. of the agricultural income from such property ;

(b) any agricultural income derived from property held under trust in part only for such purposes, to the extent to which such income is applied to such purposes in the State; and, where any such income is finally set apart for application to such purposes in the State, to the extent to which the income so

set apart is not in excess of twenty-five per cent. of the agricultural income from such property.

Explanation.--For the purposes of Clauses (a) and (b), if in the previous year, the agricultural income applied to charitable or religious purposes in the State falls short of seventy-five per cent. of the agricultural income derived during that year from property held under trust, or, as the case may be, held under trust in part by any amount-

(i) for the reason that the whole or any part of the agricultural income has not been received during that year, or

(ii) for any other reason.

then-

(a) in the case referred to in Clause (i) so much of the agricultural income applied to such purposes in the State during the previous year in which the agricultural income is received or during the previous year immediately following as does not exceed the said amount, and

(b) in the case referred to in Clause (ii) so much of the agricultural income applied to such purposes in the State during the previous year immediately following the previous year in which the agricultural income was derived as does not exceed the said amount, may, at the option of the person in receipt of the agricultural income [such option to be exercised in writing before expiry of the time allowed under Sub-section (1) or Sub-section (2) of Section 35 whether fixed originally or on extension for furnishing the return of agricultural income], be deemed to be agricultural income applied to such purposes during the previous year in which the agricultural income was derived ; and the agricultural income so deemed to have been applied shall not be taken into account in calculating the amount of agricultural income applied to such purposes, in the case referred to in Clause (i), during the previous year in which the agricultural income is received or during the previous year immediately following, as the case may be, and, in the case referred to in Clause (ii), during the previous year immediately following the previous year in which the agricultural income was derived.

(2) Where any agricultural income in respect of which an option is exercised under the Explanation to Sub-section (1) is not applied to charitable or religious purposes in the State during the period referred to in Clause (a) or, as the case may be in Clause (b), of the said Explanation, then such income shall be deemed to be the income of the person in receipt thereof :

(a) in the case referred to in Clause (i) of the said Explanation, of the previous year immediately following the previous year in which the income was received, or

(b) in the case referred to in Clause (ii) of the said Explanation, of the previous

year immediately following the previous year in which the income was derived.

(3) Where seventy-five per cent of the agricultural income referred to in Clause (a) or Clause (b) of Sub-section (1) read with the Explanation to that Sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in the State, during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in the State, such income so accumulated or set apart shall not be included in the total agricultural income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely :--

(a) such person specifies, by notice in writing given to the Agricultural Income Tax Officer in the prescribed manner, the purpose for which the agricultural income is being accumulated or set apart and the period for which the agricultural income is to be accumulated or set apart, which shall in no case exceed ten years ;

(b) the money so accumulated or set apart is-

(i) invested in any Government security as defined in Clause (2) of Section 2 of the Public Debt Act, 1944 (Central Act 18 of 1944), or in any other security which may be approved by the State Government in this behalf, or

(ii) deposited in any account with the Post Office Savings Bank [including deposits made under the Post Office (Time Deposits) Rules, 1970] or a scheduled bank or a co-operative society engaged in carrying on the business of banking (including the Kerala State Co-operative Agricultural and Rural Development Bank), or

(iii) deposited in an account with the Kerala Financial Corporation established under the State Financial Corporations Act, 1951 (Central Act 63 of 1951).

Explanation.--for the purposes of Sub-clause (ii), "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955, a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959, a corresponding new bank constituted u/s 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or any other bank, being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934.

(4) Any agricultural income referred to in Sub-section (3) which-

(a) is applied to purposes other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or

(b) ceases to remain invested in any security referred to in Sub-clause (i) or deposited in any account referred to in Sub-clause (ii) or Sub-clause (iii) of Clause (b) of that Sub-section ; or

(c) is not utilised for the purpose for which it is so accumulated or set apart

during the period referred to in Sub-clause (a) of that Sub-section or in the year immediately following the expiry thereof, shall be deemed to be the agricultural income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited, or, as the case may be, of the previous year immediately following the expiry of the period aforesaid.

(5) Notwithstanding anything contained in Sub-section (4) where, due to circumstances beyond the control of the person in receipt of the agricultural income, any such income invested or deposited in accordance with the provisions of Clause (b) of Sub-section (3) cannot be applied for the purpose for which it was accumulated or set apart, the Agricultural Income Tax Officer may, on an application made to him in this behalf, allow such person to apply such income for such other charitable or religious purpose in the State as is specified in the application by such person and as is in conformity with the objects of the trust ; and thereupon the provisions of Sub-section (4) shall apply as if the purpose specified by such person in the application, under this Sub-section were a purpose specified in the notice given to the Agricultural Income Tax Officer under Clause (a) of Sub-section (3).

(6) Nothing contained in Clause (a) or Clause (b) of Sub-section (1) shall operate so as to exclude from the total agricultural income of the previous year of the person in receipt thereof-

(a) any part of the agricultural income from the property held under trust for private religious purposes which does not ensure for the benefit of the public;

(b) in the case of a trust for charitable purposes or a charitable institution, any agricultural income thereof, if the trust or institution is created or established for the benefit of any particular religious community or caste ;

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution any agricultural income thereof,--

(i) if under the terms of the trust or the rules governing the institution any part of such income ensures ; or

(ii) if any part of such income or any property of the trust or institution is during the previous year, used or applied,

directly or indirectly for the benefit of any person referred to in Sub-section (8).

(7) Without prejudice to the generality of the provisions of Clause (c) of Sub-section (6), the income or the property of the trust or institution or any part of such income or property of the trust or institution shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in Sub-section (8),--

(a) if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in Sub-section (8) for any period during the

previous year without either adequate security or adequate interest or both ;

(b) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in Sub-section (8) out of the resources of the trust or institution, for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services ;

(c) if a substantial portion of the income or property of the trust or institution is diverted during the previous year in favour of any person referred to in Sub-section (8) ;

(d) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year in any concern in which any person referred to in Sub-section (8) has a substantial interest.

(8) The persons referred to in Sub-section (7) are the following, namely :--

(a) the author of the trust or the founder of the institution ;

(b) any person who has made a substantial contribution to the trust or institution ;

(c) any trustee of the trust or manager (by whatever name called) of the institution ;

(d) any relative of any such author, founder, person or member as aforesaid ;

(e) any concern in which any of the persons referred to in clauses (a), (b), (c) and (d) has a substantial interest.

(9) For the purposes of this section.-

(a) "trust" means a trust created for charitable purposes and includes any other legal obligation and "relative", in relation to an individual, means,--

(i) spouse of the individual ;

(ii) brother or sister of the individual ;

(iii) brother or sister of the spouse of the individual ;

(iv) any lineal ascendant or descendant of the individual ;

(v) any lineal ascendant or descendant of the spouse of the individual ;

(vi) spouse of a person referred to in Sub-clause (ii), Sub-clause (iii), Sub-clause (iv) or Sub-clause (v) ;

(vii) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.

(b) a trust or institution created or established for the benefit of Scheduled Castes, Backward Classes, Scheduled Tribes or women and children shall not be

deemed to be a trust or institution created or established for the benefit of a religious community or caste within the meaning of Clause (b) of Sub-section (6) ;

(c) "charitable purposes" include relief of the poor, education, medical relief and the advancement of any other object of public utility ;

(d) a person shall be deemed to have a substantial interest in a concern-

(i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than twenty per cent, of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in Sub-section (8),

(ii) in the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in Sub-section (8) are entitled in the aggregate, at any time during the previous year to not less than twenty per cent, of the profits of such concern.

(10) Any trust or institution created for charitable or religious purposes may make an application in the prescribed form and in the prescribed manner to the Deputy Commissioner of Agricultural Income Tax within six months from the date of commencement of this Act or from the date of creation of the trust or institution, whichever is later, along with a copy of the instrument creating the trust or the bye-law of the institution, as the case may be, for registration :

Provided that the Deputy Commissioner may admit an application for registration presented after the above date if he is satisfied that there was sufficient reason for not presenting an application in time.

(11) The Deputy Commissioner may, on receipt of the application if he is satisfied that the trust or the institution is created for religious or charitable purposes and not for avoiding or reducing the tax payable under this Act, grant registration to such trust or institution:

Provided that before passing an order rejecting an application for registration the applicant shall be given an opportunity of being heard.

(12) If the Deputy Commissioner is satisfied that any trust or institution registered under this Section, is not utilising the agricultural income in accordance with the provisions in the instrument or deed creating the trust or institution or otherwise tries to avoid or reduce the tax payable under this Act he may cancel the registration after giving the trust or institution a reasonable opportunity of being heard.

(13) A trust or institution which is not registered in the manner provided in Sub-section (10) above or the registration of which has been cancelled under this Section shall be liable to tax on the total agricultural income and the provisions

of this Chapter shall not apply to such trust or institution."

13. Section 9 of the Act deals with rebate and deduction allowable to an assessee in the computation of the amount of agricultural Income Tax on the total agricultural income chargeable for an assessment year. Sub-section (2) thereof provides for deduction of a sum not exceeding one-sixth of the total agricultural income of the assessee or twenty thousand rupees, whichever is less, paid by him in the previous year out of his agricultural income as donation to a trust or institution or a fund established for charitable purposes and notified by the Government in this behalf in the Gazette. From the above, it is clear that in order for an assessee under the Act to get deduction of the amount specified under Sub-section (2) paid to a trust, institution or a fund by way of donation from out of his agricultural income in the previous year, the said trust, institution or fund which receives the donation must be established for charitable purposes. Further, a notification in this behalf must be issued by the Government in the Official Gazette. As per the said Section, what is to be notified by the Government in the Gazette is that the trust, institution or a fund which receives the donation is established for charitable purposes. So, an adjudication as to whether the applicant for issuance of a notification is one established for charitable purposes, is necessary. Though Sub-section (2) of Section 9 provides that the trust, institution or fund which receives the donation must be one established for charitable purposes, no machinery or guidelines are provided in the said Section for declaring the same as one established for charitable purposes. In this context, it is necessary to refer to the provisions of Section 16 of the Act which has been quoted herein above. Section 16 of the Act deals with charitable trusts and institutions. Sub-section (1) of Section 16 deals with exclusion of agricultural income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in the State and also the mode of application of the said income to get the benefit of exclusion. Sub-sections (2) to (9) are related to the said Sub-section. Sub-section (9) of Section 16, Clause (a) thereof defines a "trust" as meaning a trust created for charitable purposes and includes any other legal obligations. Clause (c) of Sub-section (9) of Section 16 defines "charitable purposes" as including relief of the poor, education, medical relief and the advancement of any other object of public utility. Section 16(10), in that context, provides that any trust or institution created for charitable or religious purposes may make an application in the prescribed form and in the prescribed manner to the Deputy Commissioner of Agricultural Income Tax within six months from the date of commencement of the Act or from the date of creation of the trust or institution, whichever is later, along with a copy of the instrument creating the trust or the bye-law of the institution, as the case may be, for registration. The proviso to the said sub-section gives the power to the Deputy Commissioner to entertain applications submitted after the period provided in the said sub-section, if he is satisfied that there was sufficient reason for not presenting the application in time. Sub-section (11) provides that if the Deputy Commissioner is satisfied that the trust or the

institution is created for religious or charitable purposes and not for avoiding or reducing the tax payable under this Act, he may grant registration to such trust or institution. It further provides that before passing an order rejecting an application for registration, the applicant shall be given an opportunity of being heard. Sub-section (12) provides that if the Deputy Commissioner is satisfied that any trust or institution registered under this section, is not utilising the agricultural income in accordance with the provisions in the instrument or deed creating the trust or institution or otherwise tries to avoid or reduce the tax payable under this Act, he may cancel the registration after giving the trust or institution a reasonable opportunity of being heard. Sub-section (13) provides that a trust or institution which is not registered in the manner provided in Sub-section (10) above or the registration of which has been cancelled under this section, shall be liable to tax on the total agricultural income and the provisions of this Chapter shall not apply to such trust or institution. Section 16 occurs in Chapter IV of the Act regarding composition of agricultural Income Tax. It would appear from Sub-section (13) of Section 16 that the registration u/s 16(10) is contemplated only for availing of the benefit of Chapter IV. It would also appear from a reading of Section 16 that the registration as contemplated u/s 16(10) is required only for assessee to agricultural Income Tax claiming exemption from payment of tax in respect of the agricultural income derived by them in the previous year and that it will not apply to a charitable institution which is not an assessee under the Act.

14. A fair reading of Section 16 particularly Sub-sections (1), (2), (12) and (13) would establish beyond any doubt that the said section has application only to a charitable trust which is an assessee to agricultural Income Tax and not to any other trusts. Hence, the requirement of registration contemplated under Sub-section (10) of Section 16 will not apply to a trust applying for issuance of a notification contemplated u/s 9(2) of the Act.

15. In the instant case, the petitioner-trust does not hold any agricultural properties and is not an assessee to agricultural Income Tax. According to the petitioner, it is a trust established for charitable purposes and was registered with the Commissioner of Income Tax as a charitable trust. For the purpose of getting donations from assessee to agricultural Income Tax, the petitioner applied to the Government for issuance of a notification as contemplated under Sub-section (2) of Section 9 of the Act. The advantage of the petitioner being notified by the Government in the Gazette as a trust established for charitable purposes is that the assessee to agricultural Income Tax who make donation to the said trust will get a deduction of the amount paid to the said trust to the extent specified in Sub-section (2) in the computation of the total agricultural income of the donor. Under the said Sub-section, the power to issue the notification is conferred only on the Government and the Government can issue the notification only on being satisfied that the petitioner-trust is established for charitable purposes. Section 9(2) of the Act does not provide the procedure for issuance of a notification in that regard.

16. Then a question may arise as to what is the procedure to be followed by the Government for declaring a trust, institution or a fund as one established for charitable purposes and the parameters for deciding the said question. I have already extracted the provisions of Section 16 of the Act earlier. The expressions "trust" and "charitable purposes" are defined in Sub-section (9) of the said section. As per the said definition, a "trust" means a trust created for charitable purposes and includes any other legal obligation and "charitable purposes" is defined to include relief of the poor, education, medical relief and the advancement of any other object of public utility. Though the definitions of "trust" and "charitable purposes" in Section 16(9) of the Act are intended to be applied for the purposes of Section 16 only, in the absence of any contra intention, the same meaning can be assigned to the said expressions obtaining in Section 9(2) of the Act as well. That apart, even assuming that the definition of "charitable purposes" in Section 16(9) is confined to the purposes of Section 16 only (no warrant for such assumption), the definition of "charitable purposes" is so well known that it constitutes the well known charities, viz., relief of the poor, medical relief and education. It will also take in advancement of any other objects of public utility, (vide decisions of the Supreme Court in *P.C. Raja Ratnam Institution Vs. Municipal Corporation of Delhi and Others*, and *Municipal Corporation of Delhi Vs. Children Book Trust*,).

17. Admittedly, going by the definition of "charitable purposes" in Section 16(9) of the Act and going by the well known charities, the expression takes in relief of the poor, medical relief and education. The definition of "charitable purposes" in Section 2(15) of the Income Tax Act, 1961, is identical to the definition of the same contained in Section 16(9) of the Act. So, the decisions rendered by the Supreme Court and by this court in the context of the Income Tax Act, 1961, can be safely applied for deciding the question whether the petitioner-trust is one established for charitable purposes. Some of the decisions are *Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association*, and *Gangabai Charities Vs. Commissioner of Income Tax and another*, .

18. The Government, in the instant case, has rejected the request as per communication dated September 30, 1996 (exhibit P-9), stating that the request made by the petitioner is not acceptable to the Government. The Government has not assigned any reason whatsoever for taking such a view. However, in the counter-affidavit filed on behalf of the respondents they have taken the stand that before applying for issuance of a notification as contemplated u/s 9(2) of the Act, the petitioner-trust should have got itself registered as provided u/s 16 of the Act and that the trust did not comply with the said provision. The respondents have taken the further stand that the Deputy Commissioner of Sales Tax, Kottayam, had conducted an enquiry and reported that the trust does not have any office at Kallarackal Buildings, M. E. Road, Kottayam, and that it does not have any landed property. On the basis of the said report, it is stated that the trust does not appear to be a bona fide one and the intention behind the

request is to raise money under the cover of notification exempting the donations made to the trust from agricultural Income Tax. As already pointed out, the reasons stated in the counter-affidavit are not mentioned in the communication rejecting the application. The respondents do not have a case that the materials gathered by the Government through the Deputy Commissioner of Sales Tax mentioned above, have been put to the petitioner and its explanation obtained. The respondents also do not have a case that the petitioner was afforded an opportunity of being heard before rejecting their application. I have already held that a charitable trust, which applies for issuance of a notification u/s 9(2) of the Act, is not obliged to apply for and obtain registration as contemplated u/s 16(10) of the Act and that the said provisions apply only to charitable trusts which are assesseees under the Act. But, then, with regard to the other reason stated in the counter-affidavit, it is necessary to consider whether the Government was obliged to put the details gathered through the Deputy Commissioner behind the petitioner to the petitioner and to afford an opportunity of being heard in the matter. According to me, Section 9(2) of the Act confers an independent power on the Government to issue a notification in the Gazette on their being satisfied that the applicant-trust is established for charitable purposes. It is a statutory power conferred on the Government which has to be exercised in an objective manner. It is not a discretionary power which has to be exercised in a subjective manner. The parameter for issuance of the notification is specified in the Sub-section itself, namely, the trust which applied for issuance of the notification, is established for charitable purposes. It is well settled that any statutory authority discharging statutory functions is bound to discharge the said function in a fair and reasonable manner. Fairness in action, which is the sine qua non of the principles of natural justice, is an inbuilt safeguard in the discharge of statutory functions by a statutory authority. In the instant case, the Government called for a report from the Deputy Commissioner of Sales Tax, Kottayam. He, in the report, informed the Government that the petitioner-trust does not have any office at Kallarackal Buildings, M. E. Road, Kottayam, and that it does not have any landed property. The petitioner's case is that exhibit P-1 and P-3 to P-7 communications issued to the petitioner in the said address were received by it and further the communication, exhibit P-9 was also received in the said address. If the material furnished in the report of the Deputy Commissioner was put to the assessee, it would have immediately informed the Government of the said facts. If the petitioner were afforded an opportunity in the matter, the petitioner would have explained all the circumstances and would have furnished any further documents required for adjudication of the issue. In the instant case, it is not seen either from the communication exhibit P-9 or from the counter-affidavit filed by the respondents that the Government had considered the question as to whether the petitioner-trust is one established for charitable purposes, The Government, it would appear, was influenced by the report of the Deputy Commissioner and the fact that the petitioner has not obtained registration as contemplated u/s 16 of the Act. It would further appear that the Government had taken into account irrelevant considerations and

eschewed relevant matters in declining the relief sought for by the petitioner. I am of the view that the Government did not bear in mind the relevant matters to be considered while discharging the exercise of the powers conferred u/s 9(2) of the Act in the instant case. Accordingly, I quash the decision taken by the Government in the application filed by the petitioner u/s 9(2) of the Act and communicated in exhibit P-9. I declare that an applicant for issuance of a notification u/s 9(2) of the Act, is not obliged to get itself registered under Sub-section (10) of Section 16 of the Act. I direct the Government to consider exhibit P-8 application for issuance of the notification afresh in accordance with law and in the light of the observations contained herein above with notice and opportunity to the petitioner and to take a decision in the matter expeditiously. It is made clear that the petitioner is free to produce any further material or evidence in support of the application either at the time of hearing or before.

19. The original petition is allowed to the above extent. In the circumstances of the case, there will be no order as to costs.