

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH : COCHIN**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

<b>ITA No. 420/Coch/2024</b>
<b>Assessment Year : NA</b>

Kerala State Ex-Servicemen Development and Rehabilitation Corporation, Tc 25/838 Vimal Mandir, Opposite Amritha Hotel, Thycaud, Trivandrum – 695 014. Kerala. <b>PAN: AABTK2648H</b>	<b>Vs.</b>	The Commissioner of Income Tax (Exemption), Kochi.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	None
Revenue by	:	Shri Suresh Sivanandan, IRS, CIT-DR

Date of Hearing	:	12-03-2025
Date of Pronouncement	:	10-06-2025

**ORDER**

**PER SOUNDARARAJAN K., JUDICIAL MEMBER**

This is an appeal filed by the assessee challenging the order of the Ld.CIT(E), Kochi dated 28/02/2024 in which the application filed in form 10AB u/s. 12A(1)(ac)(iii) of the Act was rejected and raised the following grounds:

*"A. The order of the Adjudicating Authority in rejecting the application in terms of the proviso to Sec.215 is illegal, arbitrary and unauthorized.*

*B. The impugned order is in conflict with the ratio of the Judgment of the Hon'ble Supreme Court reported in (2023) 4 SCC 561. It is submitted that the test laid down by the said Judgment stands satisfied in the case of the Appellant and therefore, the impugned order is liable to be quashed and set aside.*

*C. The Adjudicating Authority went wrong in taking myopic view of the arguments and factual aspects canvassed before it.*

*D. The Adjudicating Authority failed to take note of binding Judgments of the Calcutta High Court which was canvassed during the course of arguments.*

*E. The Appellant is a Sec.25 Company and running no profit —no loss method. The profits earned are ploughed back into the system and there is no revenue on that ground. Therefore, the premise under which the Officer proceeds is bad in law.*

*For these and other grounds and documents to be submitted at the time of hearing and it is humbly prayed that the Tribunal be pleased to allow the appeal."*

2. The assessee is a company registered u/s. 25 of the Companies Act established on 07/12/2001 under the General Administrative Department of the Government of Kerala. The assessee is wholly owned by the Government of Kerala and established for the welfare, development and rehabilitation of Ex-Servicemen and their dependants. The main objects of the assessee is to rehabilitate the Ex-Servicemen on no profit no loss basis and it collects some revenue by means of administrative charges. The assessee also provided various financial assistance to the Ex-Servicemen and their dependants including education, scholarships, financial assistance for medical treatments, ex-gratia grants to the legal heirs of the Ex-Servicemen on their demise etc. The assessee is also doing certain projects to assist the Ex-Servicemen and their dependants. The assessee also trained the Ex-Servicemen in the installation of solar panels. The

assessee also runs a medical store to the benefit of the Ex-Servicemen and their dependants at a price less than 18% to 40% of the MRP. The assessee also employed the Ex-Servicemen in various government undertakings so that they can earn for their livelihood after serving in the Army. The overall aim of the assessee is to give assistance to the Ex-Servicemen after their return to civil society and to the dependants and widows of the martyrs which could be treated as a noble thing.

**3.** Originally the assessee got registration u/s. 12A from 03/06/2004 and continuously availed the benefit u/s. 12AA / 12AAB. The assessee's accounts were audited by the statutory auditors appointed by the C & AG and more than 85% of the revenue utilised towards the object of the company. However, in these circumstances, the assessee filed an application for registration u/s. 12A(1)(ac)(iii) of the Act. Along with the application, the assessee furnished all the necessary details. The Ld.CIT(E) without considering the fact that the assessee is doing the charitable activities, had rejected the application because the providing employment to Ex-Servicemen will not come under the charitable activities defined u/s. 2(15) of the Act. As against the said order, the assessee is in appeal before this Tribunal.

**4.** At the time of hearing, the Ld.AR submitted that the assessee is a section 25 company and therefore the assessee could not earn any profits and the profits could not be distributed among the members by way of dividend and therefore all the miscellaneous incomes received by the assessee while executing the objects of the assessee, will be utilised towards the objects of the assessee. The Ld.AR further submitted that right from the year 2004, the assessee is continuously enjoying the benefit granted under the Act. The Ld.AR further submitted that the department has not found out any mischief done by the assessee to deny the benefit of registration u/s. 12AA of the Act. The Ld.AR further submitted that when the facts are

like this, the present order of the Ld.CIT(E) rejecting the application is totally illegal and against the provisions of the Act.

5. The Ld.DR relied on the orders of the Ld.CIT(E).

6. We have heard the arguments of both sides and perused the materials available on record.

7. We have perused the order of the Ld.CIT(E) in which the Ld.CIT(E) had elaborately discussed the replies filed by the assessee and the reasons for rejecting the said application.

8. Nowhere the Ld.CIT(E) had considered the submission that the assessee is a company registered under sec 25 of the Companies Act in which it was clearly mentioned that when the assessee intends to apply its profits, if any, or other income in promoting its objects and to prohibit the payment of any dividends to its members, they are entitled for a licence from the Central Government under Sec 25. The assessee satisfied this requirement that their profits are utilised towards the objects and no dividends has been given to the members and therefore from the date of establishment and till date, the company is recognised as a section 25 company. Further, the assessee's accounts were audited by the statutory auditors appointed by the Comptroller and Auditor General of India and also the assessee is getting registration from the year 2004 and regularly filed their income tax returns and at no point of time, the department has pointed out any wrong doing done by the assessee company and all the exemptions claimed by the assessee were allowed by the department continuously without any interruption.

9. In the initial stages, the department has treated the assessee as doing charitable activities and on that basis only, the registration u/s. 12A has been granted and benefits u/s. 11 were granted. As stated by the assessee,

they are not doing any business activities in order to earn profit. The main object of the assessee is to formulate, promote and implement any scheme aimed at the welfare of the Ex-Servicemen belonging the State of Kerala to earn better living. The assessee also having objects to provide financial and technical assistance and managerial service to Ex-Servicemen and their dependants. In addition to the above said objects, the assessee also did some ancillary activities with no profit motive and also without distributing the profit by way of dividends. Further, the assessee is also having a medical shop and sold medicines to Ex-Servicemen and the general public at the discounted price. As already observed, the assessee is rendering services for the benefit of the Ex-Servicemen and their dependants who are all in need of some benefits after the retirement from their military service. Further, the assessee was also assisting the widows of the Ex-Servicemen who are all killed in war and operations for safeguarding the nation. Therefore, the activities / service done by the assessee is nothing but a noble service and the same should be appreciated by all the authorities.

**10.** We have also gone through the findings and the other records including the financial statements of the assessee corporation from which we are able to find that the assessee is not running a company for earning profits and to get more dividend from the said operation. As already stated, the assessee is a section 25 company and therefore there is no point of earning profit which was also considered and accepted by the Central Government and finally they have also a license u/s. 25 of the Act. Except the assessee, which was established by the Government, no other institution or organisation is assisting the Ex-Servicemen and their dependants. The assessee, therefore formed a company with the aid of the Government and tried to assist the Ex-Servicemen and their dependants who are in need and without receiving anything from the members. The mere incomes received by the assessee could not be treated as a profit and therefore their activities could be treated only as a charitable activity. Mere getting some income while executing the activities could not be treated as income obtained from

trade/business and on that basis it could not be concluded that the assessee is not doing any charitable activities.

**11.** Moreover, the assessee had applied for registration u/s. 12AA of the Act and therefore at that time, the Ld.CIT(E) could not go into the entire facts and arrive a conclusion that the assessee is not doing any charitable activities. At the best, the Ld.CIT(E) can verify the genuineness of the trust and considered the objects and not more than that while granting registration. Assuming that the order of the Ld.CIT(E) is correct, then the registration granted by the department and the exemption granted u/s. 11 from the year 2004 would be an incorrect one. All along the authorities had treated the assessee as doing charitable activities but all of a sudden, the Ld.CIT(E) had took a different view which in our opinion is not correct.

**12.** The Hon'ble Jurisdictional High Court in its judgment reported in 382 ITR 399 (Kerala) in the case of Sree Anjaneya Medical Trust Vs. CIT, had held that the authorities could have examined the genuineness of the trust and its activities while considering the application for registration and nothing more than that. Therefore, from the above judgment, it is clear that the genuineness and the activities of the trust should alone be verified by the Ld.CIT(E) at the time of granting registration and therefore the order of the Ld.CIT(E) discussing the issues in length is not a correct one.

**13.** Further the company was established for the economic upliftment of the ex servicemen and their families. By selling the medicines to the public through the medical stores is also a relief to the poor. Therefore the activities carried on by the assessee could not be termed as non charitable activities.

**14.** We, therefore, set aside the order of the Ld.CIT(E) and direct the Ld.CIT(E) to grant the registration u/s. 12AA of the Act.

15. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 10<sup>th</sup> June, 2025.

Sd/-  
(INTURI RAMA RAO)  
Accountant Member

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Cochin,  
Dated, the 10<sup>th</sup> June, 2025.  
/MS /

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|---------------|---------------------|
| 1. Appellant  | 2. Respondent       |
| 3. CIT        | 4. DR, ITAT, Cochin |
| 5. Guard file | 6. CIT(A)           |

By order

Assistant Registrar,  
ITAT, Cochin