

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

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI SONJOY SARMA, JM**

**ITA No. 232/Coch/2025
Assessment Year: 2013-14**

Bini Agencies Appellant
28/642, Municipal Rest House
Round North, Thrissur 680001
[PAN: AACFB9538Q]

vs.

The Income Tax Officer, WD-1(2), Thrissur Respondent

Appellant by: Shri Sridhar S., Advocate
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 10.06.2025
Date of Pronouncement: 31.07.2025

ORDER

Per: Inturi Rama Rao, AM

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 30.01.2025 for Assessment Year (AY) 2013-14.

2. Brief facts of the case are that the appellant is partnership firm It is engaged in the business of running bar and hotel. The return of income for AY 2013-14 was filed on 30.09.2013 declaring income of Rs. 57,75,680/-. Against the said return of income, the assessment was completed by the ITO, Ward 1(2), Thrissur

(hereinafter called "the AO") vide order dated 29.03.2016 passed u/s. 143(3) of the Income Tax Act, 1961 (the Act) at a total income of Rs. 1,65,92,440/-. While doing so, the AO brought to tax as revenue receipt the capital subsidy of Rs. 1,00,00,000/- received from Government of India under the scheme 'Incentive to Accommodation Infrastructure' by holding that the subsidy is revenue receipt as it was received after set up of the business, rejecting the contention of the appellant that it is capital receipt as it was granted to increase the inventory for promotion of tourism in the country. The AO also disallowed a sum of Rs. 1,00,000/- out of business promotion expenses. The AO also disallowed the claim for deduction of belated remittance of employees' contribution to ESI & PF u/s. 36(1)(va) of the Act of Rs. 6,44,922/-.

3. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order confirmed the findings of the AO regarding capital subsidy and also confirmed the adhoc disallowance of Rs. 1,00,000/- out of business expenses and confirmed the disallowance on account of belated remittance of ESI & PF contributions. He also confirmed disallowance of excess depreciation on UPS.

4. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

5. Ground of appeal Nos. 1 to 6 challenges the findings of the CIT(A) confirming the finding of the AO that capital subsidy of Rs.

1 crore received from the Government of India is revenue receipt. It is submitted that the appellant has received subsidy in question from the Tourism Department, Government of India under the scheme 'Incentive to Accommodation Infrastructure'. It is further submitted that having regard to the purpose of the subsidy, it is only to increase the accommodation infrastructure to encourage tourism and, therefore, having regard to the purpose of the subsidy the same should be treated as capital receipt. The ratio of the decision of the Hon'ble Apex Court in the case of Saheny Steel & Press Works 228 ITR 253 have no application, inasmuch as, the subsidy was not given in order to subsidise the operational expenses but the subsidy was given to encourage setting up new hotels. Also placed reliance on the decision of the Hon'ble Kerala High Court in the case of CIT v. Peermade Tea Co. Ltd. [1995] 213 ITR 116.

6. On the other hand, the learned Sr. DR submits that the subsidy was given only after the business have actually set up and, therefore, it cannot be treated as capital receipt.

7. We have heard the rival contentions and perused the material available on record. The issue in the present appeal is whether the subsidy received by the appellant firm from Department of Tourism, Government of India under the scheme 'Incentive to Accommodation Infrastructure' is capital receipt or not. From the notification issued by the Government of India it is clear that the intention behind granting subsidy is to encourage the growth of

hotel accommodation and increase the inventory of rooms for promotion of tourism in the country. Subsidy was granted in the form of capital grant of Rs. 2,00,000/- per room subject to a maximum of Rs. 30,00,000/- to one star hotel, Rs. 3,00,000/- per room subject to a maximum of Rs. 75,00,000/- to two star hotel, Rs. 3,00,000/- per room subject to a maximum of Rs. 1,00,00,000/- to three star category hotel projects. From the above it is clear that the intention behind formulating this policy is to encourage setting up of new hotels for promotion of tourism in the country. It is not given to subsidise the operational expenses of the hotel. The Hon'ble Supreme Court in the case of Ponni Sugars and Chemicals Ltd. [2008] 396 ITR 392 had laid down the following test to determine the character of subsidy:

"... the main eligibility condition in the scheme with which we are concerned in this case is that the incentive must be utilised for repayment of loans taken by the assessee to set up new units or for substantial expansion of existing units. On this aspect there is no dispute. If the object of the subsidy scheme was to enable the assessee to run the business more profitably then the receipt is on revenue account. On the other hand, if the object of the assistance under the subsidy scheme was to enable the assessee to set up a new unit or to expand the existing unit then the receipt of the subsidy was on capital account ..."

8. In the present case, undoubtedly the object of subsidy is to set up new hotels and, therefore, the receipt of subsidy is only capital receipt. The decision of the Hon'ble Supreme Court in the case

Saheny Steel & Press Works (supra) have no application to the facts of the present case, inasmuch as, the assistance was not intended to subsidize the cost of running hotel or to run more profitably. Accordingly, we hold that it is capital receipt not liable to tax as revenue receipt. These grounds of appeal stand allowed.

9. Ground of appeal Nos. 7 to 9 challenge the decision of the CIT(A) confirming the adhoc disallowance of Rs. 1,00,000/- out of business promotion expenses. The AO made disallowance of Rs. 1,00,000/- out of business promotion expenses without assigning any cogent reason. Even the CIT(A) confirmed the disallowance. We are of the considered opinion that in the absence of any material contrary to prove that the expenses is bogus, no disallowance can be made. Accordingly ground Nos. 7 to 9 stand allowed.

10. Ground of appeal Nos. 10 & 11 challenge the disallowance of claim for depreciation on UPS at 60%. The Hon'ble Delhi High Court in the case of CIT v. BSES Yamuna Powers Ltd. [2013] 358 ITR 47 held that computer accessories and peripherals such as printers, scanners and server form an integral part of the computer system. In fact, the computer accessories and peripherals cannot be used without the computer. Consequently, as they are part of the computer system, they are entitled to depreciation at the higher rate of 60 per cent. Respectfully following the decision we hold that UPS forms part of computer and direct the AO to allow depreciation at 60%. Ground Nos. 10 & 11 stand allowed.

11. Ground of appeal No. 11 challenges disallowance of belated remittance of employees' contribution to PF and ESI. Admittedly, the employees' contribution were not paid within the due date prescribed in the respective statutes but paid within the due date prescribed u/s. 139(1) of the Act. The issue stands covered against the assessee by the decision of the Hon'ble Supreme Court in the case of [2022] 448 ITR 518 (SC) Checkmate Services Pvt. Ltd. vs. CIT. This ground stands dismissed.

12. In the result, the appeal filed by the assessee stands partly allowed.

Order pronounced in the open court on 31st July, 2025.

Sd/
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 31st July, 2025
n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin