

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI N.K. BILLAIYA (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 91/RPR/2015  
Assessment Year: 2010-11**

M/s Jeevan Solvex Pvt. Ltd., Near Jain Mandir, Sadar Bazar, Rajnandgaon  PAN: AABCJ7301D	<b>Vs.</b>	The Income Tax Officer-I, Rajnandgaon (C.G.)
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri R.B. Doshi (CA)  
Revenue by : Shri D.K. Jain (DR)

Date of Hearing: 07/03/2018  
Date of Pronouncement: 06/06/2018

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against the order dated 11.02.2015 passed by the Ld. Commissioner of Income Tax (Appeals)-II, Raipur, for the assessment year 2010-11, whereby the Ld. CIT (A) has partly allowed the appeal filed by the assessee against assessment order passed by the AO u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee a private limited company engaged in manufacturing of rice Bran Oil, filed its return of income for the assessment year under consideration declaring nil income. Since, the case was selected for scrutiny, the AO issued notice u/s 143 (2) and 142 (1) of the Act. In compliance thereof the authorized representative of the assessee appeared along with the director of the

Company from time to time and also filed written submissions and other details. It was noticed that despite rise in GP the assessee had shown constant fall of Net Profit from 4.42% in A.Y. 2008-09 to 0.63% in the assessment year 2009-10 and to 0.48% in the assessment year under consideration. The authorized representative contended that due to increase in number of solvent plants, the assessee had to face competition in the market which has resulted into lowering of rates of finished products. The assessee further contended that due to technical reasons frequent shut downs in the plant the unit run only half of the year. Cost of raw material and indirect expenses had gone up which resulted into decrease of net profit. The assessee had claimed the expenses amounting to Rs. 43,52,081/- on account of power and fuel, labour charges, production incentive, wages, consumables, repairs and maintenance of machinery, interest, commission and brokerage, freight, lab testing Charges and depreciation. The authorized representative of the assessee further submitted that since the bank has taken over the possession of the assessee's plant and also sealed the same, the assessee is not in a position to produce books of accounts, invoices bills vouchers etc. However, the AO rejecting the submissions, made disallowance of 40% of the expenses claimed by the assessee. AO also made addition of Rs. 72,108/- on account of non-depositing of employee's contribution to provident fund and addition of Rs. 34,218/- on account of non-payment of professional tax payable/service tax. The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee restricted the disallowance on the expenditure claimed to 15%, and deleted the addition of Rs. 72,108/- holding that since the assessee had added Rs. 72,108/- back to the total income in computation to the

income filed along with , no further addition on this count is sustainable. So far as the addition of Rs. 34,218/- is concerned since, the assessee has failed to produce the evidence of payment of service tax before filing return, the Ld. CIT (A) confirmed the same. Against the findings of the Ld. CIT (A), the assessee has filed the present appeal before the Tribunal.

3. The assessee has preferred this appeal before the Tribunal on the following effective grounds:-

1. *“In the facts and circumstances of the case, the Ld. CIT (Appeals) erred in confirming the disallowance made by the AO out of various expenses, to the extent of 15% of the expenses against 40% disallowed by the AO. The disallowance sustained by Ld. CIT (A) is not justified. Ld. CIT (A) erred in not deleting the entire disallowance.*
2. *The Ld. CIT (A) erred in confirming disallowance of Rs. 34,218/- made by the AO on account of unpaid professional tax and service tax.”*

4. Before us, the Ld. counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the Ld. CIT (A) has wrongly sustained the disallowance of 15% of the total expenses claimed by the assessee. The Ld. counsel further pointed out that the assessee has submitted the Auditors Report on the basis of which it can be concluded that the assessee has maintained the books of account balance sheet and profit and loss account as per the provisions of law. However, since the bank has sealed the premises, the assessee is not in a position to produce any of the documents. The Ld. counsel further pointed out that even after making addition to 15% the net profit

of the assessee comes to 4.04% as against the net profit of .48% shown by the assessee. Hence, the Ld. counsel submitted that the assessment may be made on the basis of net profit ratio of the last assessment year. Regarding second ground, the Ld. counsel submitted that the Ld. CIT (A) has wrongly sustained the addition of Rs. 34,218/- holding that the assessee has failed to produce evidence of payment of service tax before filing return.

5. On the other hand, the Ld. Departmental Representative (DR) relying on the findings of the Ld. CIT (A) submitted that 15% disallowance sustained by the Ld. CIT (A) is reasonable and no intervention is required in this matter. So far as the addition of Rs. 34,218/- is concerned, the Ld. DR submitted that the Ld. CIT (A) has rightly upheld the action of the AO as the assessee has not produced any evidence to substantiate its claim.

6. We have heard the rival submissions and perused the material on record. Since, the plant has been sealed by the bank, the assessee is not in a position to produce any document to substantiate the expenses claimed by the assessee. The assessee has further furnished a comparative chart of expenses incurred during the A.Y. 2008-09, 2009-10 and A.Y. under consideration. We notice that the expenses incurred in the A.Y. 2009-10 is more than double of the expenses claimed by the assessee during the assessment year under consideration. The assessee has further mentioned the net profit percentage at 0.48% in the assessment year under consideration. The net profit percentage for the assessment year 2009-10 was 0.63%. We notice that the authorities below have not disputed the net profit of 0.63% in the assessment year 2009-10. Under these circumstances, we find merit in the argument of

the Ld. counsel that at the most the AO should make the assessment on the basis of net profit of the assessee in last year. Accordingly, in the interest of justice we set aside the findings of the Ld. CIT(A) and restore this ground of appeal to the AO for passing assessment order afresh on the basis of net profit for the assessment year 2009-10, which is 0.63%.

7. So for as the ground No 2 is concerned the Ld. CIT(A) has dismissed this ground of appeal holding that the assessee has failed to produce any evidence to prove that service tax was paid before filing return. Since, no evidence was produced even before us, we do not find any reason to interfere with the findings of the Ld. CIT(A). Hence, we dismiss this ground of appeal of the assessee.

In the result, appeal filed by the assessee for assessment year 2010-2011 is partly allowed for the statistical purposes.

Order pronounced in the open court on 6<sup>th</sup> June, 2018.

*Sd/-*  
(N.K. BILLAIYA)

ACCOUNTANT MEMBER

Raipur, दिनांक Dated: 06/06/2018

*Sd/-*  
(RAM LAL NEGI)  
JUDICIAL MEMBER

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-

4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय  
अधिकरण, Raipur / DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy/

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)/PS**  
**आयकर अपीलीय अधिकरण, Raipur / ITAT, Raipur**