

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.99/Ind/2017  
Assessment Year: 2009-10**

Smt. Sharmiladevi Dungarwal Neemuch	Vs.	Income tax Officer Neemuch
		(Appellant)
<b>PAN No.AAOPD-5708Q</b>		

Appellant by	Shri S.N. Agrawal & Shri Pankaj Mogra
Respondent by	Shri K.G. Goyal
Date of Hearing	<b>24.4.2018</b>
Date of Pronouncement	<b>27.4.2018</b>

**ORDER**

**PER MANISH BORAD, AM.**

This appeal filed by the assessee pertaining to Assessment Year 2009-10 is directed against the order of Id. Commissioner of - Income-tax (Appeals), Ujjain, dated 23.11.2016 which is arising out

of the order u/s 143(3) of the Income Tax Act dated 15.9.2014 framed by the ITO, Neemuch.

2. The assessee has raised the following grounds of appeal :-

*“1.1 That on the facts and in the circumstances of the case, the learned CIT(A) erred in confirming the reassessment proceedings as started by the ld. A.O. u/s 148 of the Income Tax Act without properly appreciating the facts of the case and submission made before him. The said proceedings as started by A.O. and confirmed by the CIT(A) are illegal and bad in law. The reassessment proceedings so initiated and assessment framed thereon requires to be quashed.*

*1.2 That on the facts and in the circumstances of the case, the learned CIT(A) erred in confirming the other additions as made by the ld. A.O. while passing the order u/s 143(3) of the Act even when no addition was made in respect of reason as recorded for issuance of the notice u/s 148 of the Act.*

1.3 *That on the facts and in the circumstances of the case, the learned CIT(A) erred in not deciding the point raised before him to the effect that A.O. acquires jurisdiction to issue notice u/s 143(2) & 142(1) of Income Tax Act, 1961 only on receipt of return in response to notice u/s 148, or letter to the effect that return filed earlier be treated to be in response to notice u/s 148.*

WITHOUT PREJUDICE TO THE ABOVE

02. *That on the facts and in the circumstances of the case, the learned CIT(A) erred in maintaining the addition of Rs.22719/- out of Car Expenses, Mobile expenses, travelling expenses, shop expenses and depreciation against addition of Rs. 34078/- made by the A.O. without properly appreciating the facts of the case and submission made before him and more so without affording proper and reasonable opportunity.*

03. *That on the facts and in the circumstances of the case, the learned CIT(A) erred in maintaining the addition of Rs.96000/- as made by A.O. on account of low household*

*expenses purely on assumption without properly appreciating the facts of the case and submission made before him more so without affording proper and reasonable opportunity.”*

3. Briefly stated, the facts, as culled out from record, are that the assessee is an authorised dealer of Birla Tyres and engaged in purchase and sale of tyres and tubes. The income of Rs.3,30,890/- was declared in the return of income filed on 30.9.2009. The return was processed u/s 143(1)(a) of the Act. Subsequently, as per the AIR information the Assessing Officer noticed that during the F.Y. 2008-09 the assessee has deposited cash of Rs.17,92,600/- in the saving bank account of Union Bank of India, Neemuch Branch. The Assessing Officer accordingly issued notice u/s 148 of the Act for initiating reassessment proceedings u/s 147 of the Act. During the course of assessment proceedings the Assessing Officer was satisfied that the alleged cash deposit was actually the sales which were deposited in cash in the bank account of sole proprietor and thereafter cheques were issued in the account of the proprietorship concern. The learned Assessing Officer made certain disallowances

of expenses at Rs. 34,078/- and also made addition for low household withdrawals at Rs.96,000/- and assessed the income at Rs.4,60,968/-

4. Aggrieved, the assessee preferred appeal before the learned Commissioner of Income Tax (Appeals) challenging the validity of notice issued u/s 148 of the Act as well as the reassessment proceedings and also challenged the additions made by the Assessing Officer but partly succeeded as the learned Commissioner of Income Tax (Appeals) dismissed all other grounds except scaling down the disallowance of expenses by Rs. 11,359/-.

5. Now the assessee is in appeal before the Tribunal raising two issues :-

- (i) Legal issue challenging the reassessment proceedings
- (ii) On merits challenging the additions confirmed by the CIT(A)

6. The learned counsel for the assessee submitted that there was no material available with the Assessing Officer on the basis of which it could issue notice u/s 148 of the Act to initiate the reassessment proceedings. As regards the disallowance of expenses

it was contended that no mistake was noticed by the Assessing Officer in the books of accounts and the disallowances are made on estimate basis.

7. On the other hand, the learned DR vehemently argued supporting the orders of the lower authorities.

8. We have heard the rival contentions and perused the material available on record. Apropos the first issue about validity of notice u/s 148 of the Act and the reassessment proceedings u/s 147/143(3) of the Act, we find that the return of income filed on 30.9.2009 was processed u/s 143(1)(a) of the Act which means that there was no scrutiny of accounts and records of the assessee. Subsequently, the Assessing Officer received information on the basis of AIR received by the Income Tax Department which revealed that during the F.Y. 2008-09 total cash of Rs. 17,92,602/- has been deposited in the savings bank account of the assessee held with Union Bank of India, Neemuch. In our view, this information supported by the material; evidence in the shape of AIR information was sufficient enough for the Assessing Officer to issue notice u/s 148 of the Act. The action taken by the Assessing Officer further

seems to be correct because the alleged cash was deposited in the savings bank account and one cannot ignore the possibility that the income may have been concealed and not duly reflected in the income tax return. We, therefore, in the given facts and circumstances of the case, find no infirmity in the findings of the learned Commissioner of Income Tax (Appeals) confirming the action of the Assessing Officer in issuing notice u/s 148 of the Act and to make the reassessment u/s 147 of the Act.

9. In the result, the assessee fails on the legal ground and according we dismiss ground no. 1 raised by the assessee.

10. Apropos ground nos. 2 and 3 wherein the assessee has challenged the findings of the learned Commissioner of Income Tax (Appeals) confirming the addition of Rs.22,719/- on account of estimated disallowance of car expenses, mobile expenses, travelling expenses and depreciation and also against the finding of the learned Commissioner of Income Tax (Appeals) confirming the addition for household expenses of Rs. 96,000/-, from perusal of the assessment order we find that primarily the Assessing Officer did not find any irregularity in the books of accounts of the

assessee which were duly audited and all the financial statements were placed on record. The alleged cash deposit was also duly explained by the assessee through its account books and the Assessing Officer was satisfied with the information and he has mentioned that the alleged cash was in the nature of sales during the year. The Assessing Officer after failing to make any addition on the count of alleged cash deposit, further scrutinised the account books and without pointing out any specific mistake made an ad hoc disallowance of 15% of various expenses treating them to be personal in nature. Similarly, addition for household withdrawals was made just for the lack of information to be received by the assessee. In our view, to make such disallowances the Assessing Officer should have made a test check of the bills and vouchers and should have brought on record sample of such expenditure which were personal in nature and had been booked as business expenditure. However, in the instant case, no such finding has been brought on record by the Assessing Officer. We, therefore, find no basis for the disallowance made by the Assessing Officer for expenses as well as household withdrawals. We accordingly delete

the alleged addition of Rs.22,719/- and Rs. 96,000/- and allow ground nos. 2 and 3 of the assessee's appeal.

11. In the result, the appeal of the assessee stands partly allowed.

The order pronounced in the open Court on 27 .4.2018.

SD/-

SD/-

**( KUL BHARAT )  
JUDICIAL MEMBER**

**(MANISH BORAD)  
ACCOUNTANT MEMBER**

दिनांक /**Dated : 27 April, 2018**

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/  
DR, ITAT, Indore/Guard file.

By order

**Private Secretary/DDO, Indore**

1. Date of dictation : 8.2.2018
2. Date on which the typed draft is placed before the Dictating Member : 9.2.2018
3. Date on which approved draft comes to the Sr.P.S./P.S:
4. Date on which the fair order is placed before the dictating Member for pronouncement:
5. Date on which the fair order comes back to the Sr.P.S./P.S.:
6. Date on which the file goes to the Bench Clerk:
7. Date on which the file goes to the Head Clerk:
8. The date on which the file goes to the Assisstant Registrar for signature of the order.
9. Date of Despatch of the Order:

Smt. Sharmiladevi  
ITA 99/2017