

**In the Income-Tax Appellate Tribunal,
Agra Bench, Agra**

**Before : Shri Laliet Kumar, Judicial Member And
Dr. Mitha Lal Meena, Accountant Member**

**ITA No.35/Agr/2021
Assessment Year 2017-18**

Smt. Uma Agrawal Baba Kapur Sunaran Ka Mohalla, Rajaji Ka Bada Gwalior M.P. PAN: BDPPA6915F (Appellant)	V.S.	I.T.O –1(3) Gwalior, M.P. (Respondent)
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Appellant by	Mr Manuj Sharma Adv and Rajender Sharma adv
Respondent by	Sh. Mazhar Akram, Sr. DR

Date of Hearing	14.06.2021
Date of Pronouncement	18 .06.2021

ORDER

Per Laliet Kumar, J.M.

This appeal filed by the assessee against the Order dated 25/03/2021 by the National Faceless Appeal Centre, the following grounds raised as under: -

- "1. On the facts and in the circumstances of the case the learned CIT (A) was not justified on facts and in law in not accepting



appellant's explanation about cash deposit of Rs. 211500/- in bank during demonetization period and confirming the Assessing officer's order treating the cash deposit of Rs. 211500/- as unexplained money u/s 69A. The addition of 211500/- may kindly be deleted or in the alternative suitable relief be allowed.

2. The appellant craves leave to add, amend, alter, modify or substitute any ground at the time or before hearing of appeal.”

Brief Facts

1. The appellant, an individual filed return of income for Assessment Year 2017-18 on 13/03/2018, declaring total income of Rs. 1,30,810/-.
2. During the period of demonetization, the assessee deposited the cash of Rupees 211500 /-in our bank account. It was the case of the assessee that the assessee had collected/ saved the above said sum from her previous saving, given by her husband, son, relatives for the purposes of her and family future.
3. The case of the assessee was selected for scrutiny assessment for the reason that the cash was deposited in the bank after the demonetization scheme, announced by the revenue.
4. During the course of assessment proceedings, the appellant was asked to explain the cash deposits of Rs. 2,11,500/- in the Nagrik



Sahkari Bank, made during the period of demonetization from 09/11/2016 to 30/12/2016.

5. In response to the notice issued by AO the assessee filed the reply to the notice . It was submitted by the assessee that the assessee has no business activities in a name and she only on the income from interest on her saving.
6. The assessee was asked to produce the evidence in support of her cash deposit in the bank during the demonetisation.
7. The assessing officer has made the addition of Rupees 2, 11, 500/- to the income of the assessee treating the amount deposited in the bank as unexplained money under section 69A read with 115BBE of the income tax Act 1961.
8. Feeling aggrieved by the order passed by the assessing officer the assessee filed the appeal before the Commissioner appeal (NFAC). NFAC had dismissed the appeal filed by the assessee, by mentioning in the order as under:

"The appellant submitted that the Assessing Officer erred in making addition of Rs. 2,11,500/-, without any basis. The appellant submitted that the cash deposited in the bank during the period of demonetization was out of her previous savings and savings from money given by her husband and her son for household expenses and savings for future safeguard of family from the scheme "Streedhan".

4.2 The appellant submissions were carefully considered. It is observed from the assessment order that the appellant was given numerous opportunities to explain the cash deposit. The



appellant simply submitted that it is out of her savings but did not submit any evidence in this regard. Even during the course of appellate proceedings, no evidence was furnished to prove the deposits were made out of previous savings. It appears that the appellant did not have any source of income. For the assessment year 2015-16 and 2016-17, the appellant declared income of Rs. 94,360/- and Rs. 94,030/-. It could not be believed that a person having annual income of less than Rs. 1 lakh was able to accumulate Rs.2 lakh in cash, which was deposited during demonetization period.

4.3 The Assessing Officer observed that the cash the cash deposits made during the Financial Year 2015-16 and during the period of 01/04/2016 to 08/11/2016 was 'Nil'. The only cash deposits made by the appellant, was during the period of demonetization. Similarly, there were no cash deposits made in the appellant's other banks accounts namely State Bank of India (a/c no. 33379918764) and Syndicate Bank of India (a/c no. 77802200001181).

4.5 In view of the above, the appellant's submissions that the cash deposits were made out of the previous savings cannot be accepted. The addition made by the Assessing Officer of Rs. 2,11,500/- is confirmed. This ground of appeal is dismissed."

9. Feeling aggrieved by the order passed by the NFAC on 25.03.2021, the assessee is in appeal before us on the grounds mentioned hereinabove

10. The Ld.AR for the assessee had made elaborate submissions on the aspect of the income/notional income of the housewives. He had submitted that the housewives are doing innumerable economic activities, if those activities are hired from outside, then

huge sum would be required to get the same kind of services. He had explained that women gives birth to the child, take care of the family, cook food, maintain house, manage finances of kitchen, contribute in household business/work, work in the field, discharge duties as nurse, teacher, caretaker etc. Thereafter had submitted that though house wife are normally not going out of home for earning but they are financially contributing in the families by means of above service . He had submitted that for the selfless and caring nature of House wife , they are not charging any amount for the services.

11. He further emphasized that it is a matter of common knowledge that, mother/wife and other ladies are saving money/ funds received by them either from the family or husband or children, for the rainy days.
12. It was contention of the Ld.AR that considering the above aspect into mind, the Hon'ble Prime Minister had declared that the revenue will not probe the accounts of individuals, housewives if the deposits made in the bank account were below Rs 2,50, 000/- , during Demonetization Scheme 2016. The Ld.AR had also drawn our attention to CBDT public notice dated 18th Nov 2016 and guidelines for Verification of Cash deposit during demonetization to the AO , vide Instruction No. 03/2017 Dated 21st of February, 2017 and annexure thereof issued under section 119 of Income

Tax Act . We are reproducing the relevant excerpts of F.No.225/100/2017/ITA-11 ,Annexure "Source Specific General Verification Guidelines" it provides as under :

1. Cash out of earlier income or savings

1.1 In case of an individual (other than minors) not having any business income, no further verification is required to be made if total cash deposit is up to 2.5 lakh. In case of taxpayers above 70 years of age, the limit is Rs. 5.0 lakh per person. The source of such amount can be either household savings/ savings from past income or amounts claimed to have been received from any of the sources mentioned in Paras 2 to 6 below. Amounts above this cut-off may require verification to ascertain whether the same is explained or not. The basis for verification can be income earned during past years and its source, filing of ROI and income shown therein, cash withdrawals made from accounts etc .

13. On the basis of the above it was submitted that even as per the instructions of the Board, which are statutory and binding on the revenue, assessing officer has no mandate to tax the cash deposit made in the bank account by the housewife if the amount is less than 2.5 lakh, during the Demonetization Scheme of 2016.



14. Mr Manuj Sharma Adv had also relied upon the recent decision of the Hon'ble Supreme Court in the matter of Kirti vs Oriental Insurance company Civil Appeal no 19-20 of 2021 decided on 5.1.2021 (para 24-27). On the above basis of the above decision it was submitted that Sc had acknowledge income/ notional income of House wife and if Rs 2,21,000/ was deposited by the assessee than it should be presumed that said amount was deposited out of her saving or other income hence the addition made by the assessing officer and confirmed by the National Faceless Appeal Centre are required to be struck down.

15. Per contra DR for the revenue had vehemently relied upon the order passed by the assessing officer as well as by the CIT (A).

16. We have considered the rival contention of the parties and perused the material available on record, including the judgments cited at bar during hearing by both the parties. In Indian culture women have special place, this had been recognised from the time of Vedas and Purans. To illustrate it is mentioned in Manusmriti that

यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवताः ।

यत्रैतास्तु न पूज्यन्ते सर्वास्तत्राफलाः क्रियाः ॥ मनुस्मृति ३/५६ ॥

Anvaya: यत्र तु नार्यः पूज्यन्ते तत्र देवताः रमन्ते, यत्र तु एताः न पूज्यन्ते तत्र सर्वाः क्रियाः अफलाः (भवन्ति) ।



जहाँ स्त्रियों की पूजा होती है वहाँ देवता निवास करते हैं और जहाँ स्त्रियों की पूजा नहीं होती है, उनका सम्मान नहीं होता है वहाँ किये गये समस्त अच्छे कर्म निष्फल हो जाते हैं।

Where women are worshiped, there lives the Gods. Wherever they are not worshiped, all actions result in failure.

**शोचन्ति जामयो यत्र विनश्यत्याशु तत्कुलम् ।
न शोचन्ति तु यत्रैता वर्धते तद्धि सर्वदा ॥ मनुस्मृति ३/५७ ॥**

Anvaya: यत्र जामयः शोचन्ति तत् कुलम् आशु विनश्यति, यत्र तु एताः न शोचन्ति तत् हि सर्वदा वर्धते ।

जिस कुल में स्त्रियाँ कष्ट भोगती हैं, वह कुल शीघ्र ही नष्ट हो जाता है और जहाँ स्त्रियाँ प्रसन्न रहती हैं वह कुल सदैव फलता फूलता और समृद्ध रहता है । (परिवार की पुत्रियों, बधुओं, नवविवाहिताओं आदि जैसे निकट संबंधिनियों को 'जामि' कहा गया है ।)

The family in which women (such as mother, wife, sister, daughter et al.) are full of sorrow that family meets its destruction very soon; while the family in which they do not grieve is always prosperous.

17. From the ancient time, women in India are having special place in family and society. We have many woman as role model in Indian history to a name a few Mata Zizabai (Mother of Chaterpati Shivaji Maharaj) , Ahaliya Bhai , Laxmi Bai, Phoole , Anne Besant , Captain Lakshmi Swaminathan (better known as Lakshmi Sahgal), of INA, though were house wife, but had contributed a lot as and when occasion so demanded .Further many housewives had even contributed by way of cash and jewelry during freedom movement.
18. On July 13, 1927, Mahatma Gandhi addressed a gathering at the Mahila Seva Samaja in Basavanagudi. Gandhi encouraged women to be change-makers and contribute to the Freedom movement and

Harijan Movement by donating their streedhan and other money. Similar call was given Former PM Pt Nehru, during 1962 war thereby calling on the women of India to give their jewelry to the cause. Above said had been recorded here just to show that women in India were always saving some money for the family.

19. The Housewife contribution in the family is immeasurable. Hon'ble Supreme court had recently in the matter of Kirti vs OIC (2021) 2 SCC 166 (supra) had recognized and reiterated the concept of income / notional income of house wife , through (Hon'ble J N V Ramana (in concurring decision) , had laid down guidelines for arriving at income / notional income in the following manner

7. *Before discussing this topic further, it is necessary to comment on its gendered nature. In India, according to the 2011 Census, nearly 159.85 million women stated that "household work" was their main occupation, as compared to only 5.79 million men.*

8. *In fact, the recently released Report of the National Statistical Office of the Ministry of Statistics & Programme Implementation, Government of India called "Time Use in India-2019", which is the first Time Use Survey in the country and collates information from 1,38,799 households for the period January, 2019 to December, 2019, reflects the same gender disparity. The key findings of the survey suggest that, on an average, women spend nearly 299 minutes a day on unpaid*

domestic services for household members versus 97 minutes spent by men on average. Similarly, in a day, women on average spend 134 minutes on unpaid caregiving services for household members as compared to the 76 minutes spent by men on average.³ The total time spent on these activities per day makes the picture in India even more clear women on average spent 16.9 and 2.6 percent of their day on unpaid domestic services and unpaid caregiving services for household members respectively, while men spent 1.7 and 0.8 percent.⁴

9. *It is curious to note that this is not just a phenomenon unique to India, but is prevalent all over the world. A 2009 Report by a Commission set up by the French Government, analyzing data from six countries, viz. Germany, Italy, United Kingdom, France, Finland and the United States of America, highlighted similar findings:*

*"117. Gender differences in time use are significant. In each of the countries under consideration, men spend more time in paid work than women and the converse is true for unpaid work. Men also spend more time on leisure than women. The implication is that **women provide household services but other members of the household benefit...**"⁵*

(emphasis supplied)

10. *The sheer amount of time and effort that is dedicated to household work by individuals, who are more likely to be women than men, is not surprising when one considers the plethora of activities a housemaker undertakes. A housemaker often prepares food for the entire family, manages the procurement of groceries and other*

household shopping needs, cleans and manages the house and its surroundings, undertakes decoration, repairs and maintenance work, looks after the needs of the children and any aged member of the household, manages budgets and so much more. In rural households, they often also assist in the sowing, harvesting and transplanting activities in the field, apart from tending cattle [See **Arun Kumar Agrawal** (*supra*); **National Insurance Co. Ltd. v. Minor Deepika rep. by her guardian and next friend, Ranganathan, 2009 SCC OnLine Mad 828**]. However, despite all the above, the conception that housemakers do not "work" or that they do not add economic value to the household is a problematic idea that has persisted for many years and must be overcome.

11. The concurring opinion in the **Arun Kumar Agrawal** judgment (*supra*), has highlighted this bias:

"44. This bias is shockingly prevalent in the work of census. In the Census of 2001 it appears that those who are doing household duties like cooking, cleaning of utensils, looking after children, fetching water, collecting firewood have been categorised as nonworkers and equated with beggars, prostitutes and prisoners who, according to the census, are not engaged in economically productive work. As a result of such categorisation about 36 crores (367 million) women in India have been classified in the Census of India, 2001 as non-workers and placed in the category of beggars, prostitutes and prisoners. This entire exercise of census operations is done under an Act of Parliament."



12. *In fact, this unfortunate silence when it comes to the value of housework has been a problem which was identified as far back as in 1920, when the economist Pigou noted the oddity and contradictions when it came to the calculation of the contribution of women in the national income, by stating that:*

1. *" ¼the services rendered by women enter into the dividend when they are rendered in exchange for wages, whether in the factory or in the home, but do not enter into it when they are rendered by mothers and wives gratuitously to their own families. Thus, if a man marries his housekeeper or his cook, the national dividend is diminished".⁶*

2. *This issue was further focused on by those in the field of feminism economics in the 1970s and 1980s, who criticized the traditional labour statistics which did not consider unpaid domestic work and therefore undervalued women's role in the economy.⁷*

13. *On considering the growing awareness around this issue, the United Nations Committee on the Elimination of Discrimination against Women adopted General Recommendation No. 17 on the "Measurement and quantification of the unremunerated domestic activities of women and their recognition in the gross national product" in 1991. The General Recommendation affirmed that "the measurement and quantification of the unremunerated domestic activities of women, which contribute to development in each country, will help to reveal the de facto economic role of women".*



14. *It is worth noting that the above General Recommendation is passed in furtherance of Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women which relates to ending discrimination against women in the field of employment, a Convention that India has ratified.*

15. *The issue of fixing notional income for a homemaker, therefore, serves extremely important functions. It is a recognition of the multitude of women who are engaged in this activity, whether by choice or as a result of social/cultural norms. It signals to society at large that the law and the Courts of the land believe in the value of the labour, services and sacrifices of homemakers. It is an acceptance of the idea that these activities contribute in a very real way to the economic condition of the family, and the economy of the nation, regardless of the fact that it may have been traditionally excluded from economic analyses. It is a reflection of changing attitudes and mindsets and of our international law obligations. And, most importantly, it is a step towards*

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18. *Returning to the question of how such notional income of a homemaker is to be calculated, there can be no fixed approach. It is to be understood that in such cases the attempt by the Court is to fix an approximate economic value for all the work that a homemaker does, impossible though that task may be. Courts must keep in mind the idea of awarding just compensation in such cases, looking to the facts and circumstances [See R.K. Malik v. Kiran Pal, (2009) 14 SCC 1]."*

20. Further as per a UNDP (United Nations Development Programme) study, 80% of women in India don't have bank accounts, as of 2014-15. Women (across socioeconomic groups) are often accompanied by male relatives who deal with banking officials to open a new bank account, make deposits, etc. on behalf of their female relatives. Documents carrying the name/signature of a father or a husband are often a requirement. Opening and operating accounts on mobile wallets requires mobile phones (preferably smartphones equipped



with access to the internet) to begin with, which several women may not even own. Therefore, in essence, women require the consent of male relatives to access formal financial channels, whereas cash offers them a certain amount of independence.

21. Only after Hon'ble PM initiative of Jandhan Yojana , impetus was given to open the bank account with more focus on rural areas and women. Prior thereto generally women were not maintaining any Bank account and were largely keeping the cash in house at odd places, for the emergency use.

22. Women all over the country , had been accumulating cash that they had saved for themselves from household budgets , by haggling with vegetable sellers, tailors, grocers and assorted traders, years of stashing in whatever little cash gifts they received from relatives during festival times and years of tucking away the change they found in the pants that they washed every day, however suddenly they were left with no option but to deposit the amount in the denomination of Rs 500 and Rs 1000 notes in the banks on account of Demonetisation scheme 2016 , these notes were no more legal tenders. Lot of concerned were raised by political and social organisation bring on fore the plight of women folks, on account of scheme of 2016.

23. Hon'ble PM and thereafter CBDT , considering the above said aspects in

mind and showing their concern to Women (house wife etc) had issued instruction under section 119 to AO, had assured that the individual assessee and house wife having no business income , would not be questioned if the bank deposits during the demonetisation were found to be less than Rs 2, 50, 000/ (exemption limit of Income tax) . Further revenue had issued following press release for the benefit of public on 18/11/2016, immediately after the announcement of the Scheme .

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

New Delhi,

18th November, 2016.

PRESS RELEASE

Sub: Demonetisation of Old High Denomination Currency & Cash Deposits in Bank Accounts

It was announced by the Government earlier that small deposits made in the banks by artisans, workers, housewives, etc. would not be questioned by the Income Tax Department in view of the fact that present exemption limit for Income Tax is Rs.2.5 lakh.

Reports are being received of instances where people are using other

persons' bank accounts to convert their black money into new denomination notes for which reward is also being given to the account holders who agree to allow their accounts to be used. This activity has been reported in case of Jan-Dhan Accounts also.

It is hereby clarified that such tax evasion activities can be made subject to Income Tax and penalty **if it is established that the amount deposited in the account was not of the account holder but of somebody else**. Also the person who allows his or her account to be misused for this purpose can be prosecuted for abetment under Income Tax Act.

However, genuine persons depositing their own household savings in cash into their bank accounts would not be questioned.

The people are requested not to get lured by black money converters and be a partner in this crime of converting black money into white through this method. Unless all citizens of the country help the Government in curbing black money, this mission of black money will not succeed. Also the people who are against the black money should give information of such illegal activities going on to the Income Tax department so that immediate action can be taken and such illegal transfer of cash can be stopped and seized.

Black money is a crime against humanity. We urge every conscientious citizen to help join the Government in eradicating it.

(Meenakshi J. Goswami)

Commissioner of Income Tax

(Media and Technical Policy)

Official Spokesperson, CBDT.

24. The assessee during the assessment proceedings and before first appellate authority, had raised her plea of issuing the binding

instructions , however despite that the additions were made on account of the deposit made in the bank for an amount of Rs. 2, 21, 000/-. In our view the addition made by the lower authority cannot be sustained on account of the statement given by the Prime Minister, press statement and the standard operating procedure issued by the board, as instructions under section 119 to the Assessing officer , as the instructions issued by the Board are statutory and binding on the revenue . In the matter of **Dinakar Ullal 2010] 323 ITR 452 (Karnataka)[24-02-2010] it was held as under :**

10. A plain reading of the aforesaid statutory provision, it is beyond cavil of doubt that, the Board is empowered from time to time to issue orders/directions/instructions to income-tax authorities, as it may deem fit for proper administration of the Act, and more particularly under clause (b) of sub-section (2) of section 119, for avoiding genuine hardship in any case, authorising any income-tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified by or under the Act for making such application or claim and deal with the same on the merits, in accordance with law. The statute does not indicate vesting a jurisdiction in the Board to issue instructions in excess of what is stated in section 119(2)(b). It is well-settled that instructions/circulars/guidelines are binding to the extent they are not inconsistent with the provisions of the Act.

11. It is elsewhere said that the power of the Board is enlarged where the provisions of the Act bar the income-tax authorities from entertaining any application for claim of any exemption, deduction, refund or any other reliefs due under the Act for the reason that the time limit specified for the making of such application or claim has expired. Thus, the Board is empowered to authorise the Commissioner of Income-tax Officer to admit such application or claim even after the time limit and to deal with it, in accordance with law.

12. In *State of M.P. v. G.S. Dall and Flour Mills*, AIR 1991 SC 772 ; [1991] 187 ITR 478, the apex court held that executive instructions can supplement a statute or cover areas to which the statute does not extend but they cannot run contrary to the statutory provisions or whittle down their effect. In *Kerala Financial Corporation v. CIT* [1994] 210 ITR 129 (SC); AIR 1994 SC 2416, following the opinion of Mukharji J. at paragraph 42 in *State Bank of Travancore v. CIT* [1986] 158

[ITR 102 \(SC\)](#); AIR 1986 SC 757, that circulars "cannot detract from the Act", the apex court held that a circular of the Board under section 119 cannot override or detract from the Act inasmuch as, what section 119 has empowered is to issue orders, instructions or directions for the proper administration of the Act or for such other purpose specified in sub-section (2) of that section and that such an order, instruction or direction cannot override the provisions of the Act which would be destructive of all the known principles of law as the same would really amount to giving powers to a delegated authority to even amend the provisions of the law enacted by Parliament.

13. Thus viewed, section 119 authorises the Board to issue orders, instructions and directions to the income-tax authorities "for proper administration of the Act". A circular is admittedly executive in character and has to be issued in aid of functioning of the Act and with the objective that, the provisions of the Act are properly administered. The Board may, in issuing a circular, clarify a point of ambiguity in any provision of law. Such clarification is not binding upon the courts. It cannot also run counter to the legislative provisions and create rights or obligations which are contrary to the statute. Instructions really supplant the law and not supplement the law. It is settled law that circulars cannot impose any burden on the taxpayer but can deviate from the provisions of the Act if it is beneficial to the assessee and has mitigated or relaxed the rigour of the law."

25. In view of the law laid down by the High Court and also by the Supreme Court with respect to binding nature of the instruction issued by the board Instruction No. 03/2017 Dated 21st of February, 2017, we are of the opinion that the assessing officer was prohibited from making the addition in the hands of the housewife if the amount deposited in the bank was found to be less than 2.5 lakhs. The instructions were issued by the board , for the benefit of the person mentioned in the instructions, including the housewife and with a view to mitigate their grievances and also save them from the rigorous provisions of Income Tax Act.

26. Further we may refer Section 69A of the Act , which provies as under :

69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income⁶⁴, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the 61a[Assessing] Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article **may** be deemed to be the income of the assessee for such financial year.]

27. From the reading of the above said provision makes it abundantly clear that the requirement of the section is that money or other asset must be "found "and the assessee is found to be owner of article specified in the section. Further this provision provides that if the assessee offers no explanation about the nature and source of acquisition of money etc or the explanation offered by the assessee, in the opinion of the AO is not satisfactory then the assessing officer "**may**" deem such money etc as income of the assessee for such financial year.
28. In the present case the assessee had given the explanation to the AO during the assessment proceedings and had submitted that the amount deposited in the bank, were her money saved by her in last many year's and were kept by her , for herself and for the family in case of emergency need. However, this explanation was rejected by the AO on the pretext the assessee was not having income from any business. However assessing officer has not brought on record any document, evidence etc

to show that the assessee was having any income from any other source other than saving from various activities mentioned elsewhere. Further no evidence had been brought on record , AO, in terms of press statement dated 18/11/2016 and SOP to established that the amount deposited in the account was not of the account holder/ assessee but of somebody else. In the light of the above when the AO had brought on record the evidence of proving that the money belongs to other person and not of the assessee, the amount deposited shall not added as income of the assessee.

29. In our opinion assessee had duly explained the source of deposit i.e previous years saving and we have no hesitation to accept the same , as it would be presumed that this small amount of Rs 2,21, 000/ would have been accumulated or saved by her from various activities undertaken by her for and on behalf of family in last many years . Further as mentioned herein above, in the decision of Kirti (supra), women per say cannot be said to be not having income from any activities , as they are presumed to always been doing economic activities in the family for many years, hence in our view the assessee had duly explained the source of her investment. Therefore no additions can be made by lower authority. Further even if we ignore the explanation, for the sake of argument, then also it is for the assessing officer to bring on record some cogent evidence to prove that the amount deposited in the bank was undisclosed income arising from the business or from any other activities. No evidence has been brought on record by

the lower authorities. Hon'ble Supreme Court in the matter of Smt. P.K. Noorjahan*[1999] 103 Taxman 382 (SC) it was held as

“3. Shri Ranbir Chandra, the learned counsel appearing for the revenue, has urged that the Tribunal as well as the High Court were in error in their interpretation of section 69. The submission is that once the explanation offered by the assessee for the sources of the investments found to be non-acceptable the only course open to the ITO was to treat the value of the investments to be the income of the assessee. The submission is that the word 'may' in section 69 should be read as 'shall'. We are unable to agree. As pointed out by the Tribunal, in the corresponding clause in the Bill which was introduced in the Parliament, the word 'shall' had been used but during the course of consideration of the Bill and on the recommendation of the Select Committee, the said word was substituted by the word 'may'. This clearly indicates that the intention of the Parliament in enacting section 69 was to confer a discretion on the ITO in the matter of treating the source of investment which has not been satisfactorily explained by the assessee as the income of the assessee and the ITO is not obliged to treat such source of investment as income in every case where the explanation offered by the assessee is found to be not satisfactory. The question whether the source of the investment should be treated as income or not under section 69 has to be considered in the light of the facts of each case. In other words, a discretion has been conferred on the ITO under section 69 to treat the source of investment as the income of the assessee if the explanation offered by the assessee is not found satisfactory and the

said discretion has to be exercised keeping in view the facts and circumstances of the particular case.

4. In the instant case, the Tribunal has held that the discretion had not been properly exercised by the ITO and the AAC in taking into account the circumstances in which the assessee was placed and the Tribunal has found that the sources of investments could not be treated as income of the assessee. The High Court has agreed with the said view of the Tribunal. We also do not find any error in the said finding recorded by the Tribunal. There is, thus, no merit in these appeals and the same are, accordingly, dismissed. No order as to costs."

30. The word "**may**" had been used by the statute under section 69A , as had been used by the statute under section 69 of the Income Tax Act 1961, therefore applying the same analogy as laid down by SC in the case of Smt. P.K. Noorjahan(supra) , we are of the opinion that the amount deposited by the assessee during the demonetisation. Cannot be treated as income of the assessee. Hence the appeal of the assessee is allowed .

31. We may clarify that this decision may be treated as precedent in respect to proceedings arising out of the cash deposit made by the housewives during the demonetisation scheme 2016, only up to the limit of Rs 2.5 lakhs only .

32. Lastly We record our appreciation for contribution made by Sh Manuj Sharma Adv in adjudication of this appeal .

33. In the result the appeal of the assessee is allowed . Announced in open court on 18th June 2021.

SD/-

(Dr. Mitha Lal Meena)
Accountant Member

SD/-

(Laliet Kumar)
Judicial member

Copy of order forwarded to:

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|--|---------------------------|
| (1) <i>The appellant</i> | (2) <i>The respondent</i> |
| (3) <i>Commissioner</i> | (4) <i>CIT(A)</i> |
| (5) <i>Departmental Representative</i> | (6) <i>Guard File</i> |

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Agra Bench, Agra