IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA
[Before Shri J. Sudhakar Reddy, Accountant Member & Shri S.S. Godara, Judicial Member]

I.T.A. Nos. 2000 & 2001/Kol/2018
Assessment Years: 2009-10 & 2010-11

M/s. Mono Orion Food India Pvt. Ltd.....Appellant
[PAN: AADCM 2667 H]

Vs.

DCIT, Circle-8(1), Kolkata.....Respondent

Appearances by:

Sh. Subash Agarwal, Adv., appeared on behalf of the Assessee.

Sh. Supriyo Pal, JCIT, Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : October 14th, 2019
Date of pronouncing the order : December 04th, 2019

ORDER

Per J. Sudhakar Reddy, AM :-

Both these appeals filed by the assessee are directed against separate orders of the Commissioner of Income Tax (Appeals)-3, Kolkata ['CIT(A)' for short] dated 17.07.2018 u/s 250 of the Income Tax Act, 1961 ('the Act' for short) for AYs 2009-10 & 2010-11 respectively. As the issues arising in both the appeals are common, for the sake of convenience they are heard together and disposed off by way of this common order.

2. The assessee had filed its return of income for the AY 2009-10 on 15.09.2009 declaring total income at ₹5,22,860/-. For the AY 2010-11 the assessee e-filed the return of income on 26.09.2010 at a total income of ₹5,44,371/-. Assessments were re-opened for both the assessment years and assessment orders were passed u/s 147 r.w.s. 143(3) of the Act. Additions were made u/s 68 of the Act for both the assessment years.

3. Aggrieved, the assessee carried the matter in appeal. The first appellate authority confirmed the order of the AO. Further aggrieved, the assessee is in appeal before us.

4. The re-opening of assessments u/s 148 of the Act has been challenged in both the assessment orders. The assessee further challenged the addition made u/s 68 of the Act as bad in law in both the assessment orders.

5. The ld. Counsel for the assessee submitted that the re-opening of the assessment for both the assessment years is bad in law. For assessment in AY 2009-10, he submitted that the reasons recorded, copy of which is placed at pages 123-126 of the paper book, demonstrates that the AO has not independently applied his mind to the material which came into his possession before coming to a conclusion that the income which is subject to tax has escaped assessment. He pointed out that the two bank accounts in Oriental Bank of Commerce bearing Nos. 03921131001285 and 11011131000575 do not belong to the assessee nor is the assessee in any way connected with the same. He drew the attention of the Bench to the copy of the letter written by the AO to the assessee on 08.07.2016, wherein he changed his stand and tried to justify the re-opening of the assessment. He further, submitted that there is no live nexus between the material and the formation of the belief of the AO. He relied on a number of case laws for the proposition that in such circumstances the re-opening of assessment has to be held as bad in law.

6. For the AY 2010-11, he drew our attention to the reasons recorded for re-opening of the assessment, a copy of which is placed at page 72 of the paper book and submitted that a bland statement, without any material, was made, that the companies were not in existence, and that the directors could not prove the identity, creditworthiness and genuineness of the transactions. He submitted that no independent enquiry was made by the AO and it is not known as to what is the nature of enquiry made and as to who has done the spot verification and what was the report considered by the AO for coming to such a conclusion. He submitted that the conclusions drawn by the AO while recording the reasons are not based on any facts or material and that there were lacking of details and that this point out to non-application of mind by the AO. He also pointed out that nothing new was discovered during survey and what was already on record is said to have been found. He relied on some case laws in support of his arguments, which would be discussing as and when required.

7. On merits the ld. Counsel for the assessee submitted that in both the cases, adequate opportunity was not given to the assessee and that the AO as well as the ld. CIT(A) had not properly appreciated the evidence filed and arguments made by the assessee and that under those circumstances the issues may be restored to the file of the AO for fresh adjudication in accordance with law, as was being done by the Tribunal in similar cases on the additions made u/s 68 of the Act. He relied on certain case laws for this purpose.

8. The ld. DR on the other hand vehemently opposed the contentions of the assessee and submitted that the re-opening of the assessments was legal and has to be upheld. For the AY 2009-10 he drew the attention of the Bench to the disposal of the objections against re-opening by the AO vide his letter dated 08.07.2016, a copy of which is placed at page 127 of the paper book and pointed out that it was never alleged that the bank accounts in question belong to the assessee company. He submitted that the amount deposited in those two bank accounts, were transferred to the assessee company through a number of Jama-Kharchi companies. He argued that reasonable belief has to be entertained by the AO and escapement of income need not be proved with evidence conclusively at the time of recording reasons for reopening of assessment. He relied on certain case laws in support of this contention which he will be discussing as and when the occasion arises. He relied on the order of the ld. CIT(A) on this issue of re-opening. For the AY 2010-11, he submitted that a survey was conducted and during the course of survey, it has come to the notice of the AO that the assessee had received certain cash credits. He submitted that spot verification was made and on such enquiry it was found that the creditors from whom the assessee received amounts, were non-existent. Thus he submits that the re-opening of assessment on such facts, including the fact that the CEO of the company could not explain the identity, creditworthiness and genuineness of the creditors during the course of survey, justifies the action of the AO entertains a belief that income subject to tax has escaped assessment and hence he re-opened the assessment u/s 148 of the Act. He argued that the re-opening of assessment has to be upheld.

9. On merits, he submitted that he has no objection if the matters are restored, for fresh adjudication in accordance with law, to the file of the AO, as there was violation of

the principles of natural justice. He wanted the Tribunal to direct the assessee to cooperate with the assessing authorities on this issue.

10. Rival contentions heard. On a careful consideration of the facts and circumstances of the case, perusal of the papers on record and the orders of the authorities below, as well as case law cited we hold as follows.

11. We first take up the re-opening of assessment for the AY 2009-10.

12. The reasons recorded for re-opening are extracted for ready reference:

> *"It has been reported by DDIT (Inv.), Unit-4(1), Kolkata that the aforesaid assessee company maintained two bank accounts in Oriental Bank of Commerce bearing accounts no - 03921131001285 & 11011131000575. The above bank account were opened by Shri Vishnu Parasramka and Shri Trilak Chan Parasramka. In the aforesaid bank accounts, all the credit were being done only on cash since the opening of the accounts as reported by DDIT(lnv).*
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> *On examination of FIU-IND' data base, it was found that the total cash of Rs.9,99,999/- were deposited in the bank accounts on many occasions. It has further been reported that the high value cash transactions had been routed through 21 no of companies as per list forwarded by DDlT(lnv).*
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> *Considering the above facts there is a reason to believe that Rs.9,99,999/- was unexplained cash deposit in the assessee's Bank account and to unearth the cash transactions routed through several other group companies belonging to the above mentioned assessee company. Hence, Rs.9,99,999/- had escaped assessment within the meaning of Sec. 147 of the Act."*

13. The assessee filed objections on 19.07.2016. In these objections the assessee stated that the two bank accounts referred to in the reasons recorded do not belong to the assessee and that the name of the persons mentioned in the reasons, as those who have opened the bank accounts, are in no way connected with the assessee. It was objected that the AO merely relied on the information passed on to him by the DDIT(Inv), Unit-4(1) without independent application of mind. Many other objections were taken.

The AO rejected these objections as follows:

> *"However on examination of the above said bank accounts it was found out that an amount of Rs.9,99,999/-, deposited in the above said bank accounts in cash, was transferred to your Company routed through 21 nos. of Companies. During an Income Tax Proceedings the account holders of the alleged bank accounts with Oriental Bank of Commerce could not explain the source of such huge cash deposits and accepted that they were engaged in Jama-Kharchi business for providing accommodation entries in form of bogus share capital, unsecured loan etc. and thus introduction of the fund of Rs.9,99,999/- in your company through the above said bank accounts/account holders during the FY 2008-09 relevant to the AY 2009-10 was nothing but your unexplained cash credit."*

14. A perusal of the above takes us to a conclusion that the AO has merely relied on the report of the DDIT(Inv), Unit-4(1) without independent application of mind. The two bank accounts, in Oriental Bank of Commerce i.e. account Nos. 03921131001285 and 11011131000575, belong to Sri Vishnu Parasramka and Sri Trilok Chand Parasramka and not to the assessee. The assessee submitted that it is in no way connected to these persons. The AO has not brought out any evidence to prove even a remote connection with the assessee with these persons. There is no live nexus between the material in the possession of the AO and reasons recorded. The mistake done by the AO is sought to be rectified in the reply to the objection. A vague statement is made that money is transferred through 21 no. of companies. This is not *prima facie* based on evidence. The Hon'ble Courts have laid down that a rational and intelligible nexus is to be found between the material and the reason recorded for the purpose of re-opening of assessment. The Supreme Court in the cases of *ITO vs. Lakhmani Mewal Das* reported in *103 ITR 437 (SC)* and *Ganga Saran & Sons vs. ITO 130 ITR 1 (SC)* held as follows:

> *"a) Income Tax-officer vs. Lakhmani Mewal Das 103 ITR 437 (SC):*
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> *"As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far- fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words "definite information" which were there in section 34 of the Act of 1922 at one time before its amendment in 1948 are not there in section 147 of the Act of 1961 would not lead to the conclusion that action cannot be taken for reopening assessment even if the information is wholly vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence."*
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> *b) Ganga Saran & Sons vs. ITO 130 ITR 1 (SC):*
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> *"The important words under section 147 (a) are "has reason to believe" and these words are stronger than the words "is satisfied". The belief entertained by the Income Tax Officer must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The Court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Income Tax Officer in coming to the belief, but the Court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice under section 147 (a). If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief the conclusion would be inescapable that the Income Tax Officer could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the*

assessee to disclose fully and truly all material facts and the notice issued by him would be liable to he struck down as invalid."

15. The reasons recorded cannot be supplemented while disposing off the objections for re-opening. The Hon'ble Bombay High Court in the case of *Hindustan Lever Ltd. vs. R.B. Wadkar* reported in *268 ITR 332* held as follows:

"Where an assessment under section 143(3) has been made for relevant assessment year, no action can be taken under section 147 after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reasons of failure on the part of the assessee to disclose all material facts necessary for his assessment for that assessment year. [Para 18]

In the instant case, the last date of the relevant assessment year was 31-3-1997 and from that date, if four years were counted, the period of four years expired on 1-3-2001. The notice issued was dated 5-11-2002, and received by the assessee on 7-11-2002. Under those circumstances, the notice was clearly beyond the period of four years. [Para 19]

The reasons recorded by the Assessing Officer nowhere stated there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. The reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestations of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise the reasons which were lacking in material particulars would get supplemented, by the time the matter reaches the Court, on the strength of affidavit or oral submission advanced. [Para 20]

Having recorded the finding that the impugned notice itself was beyond the period of four years from the end of the relevant assessment year and did not comply with the requirements of proviso to section 147, the Assessing Officer had no jurisdiction to reopen the assessment proceedings which were concluded on the basis of assessment under section 143(3). On that short count alone, the impugned notice was liable to be quashed and set aside. [Para 21]"

16. We also find that the AO has not applied his mind to the information received. Such reasons recorded for re-opening would make the re-opening of assessment bad in law.

16.1 The Hon'ble Delhi High Court in the case of *CIT vs. Insecticides (India) Ltd.* reported in *[2013] 357 ITR 330* held as follows:

> *"7. We may point out at this juncture itself that the Tribunal did not go into the question of merits. It only examined the question of the validity of the proceedings under Section 147 of the said Act. The Tribunal, in essence, held that the purported reasons for reopening the assessments were entirely vague and devoid of any material. As such, on the available material, no reasonable person could have any reason to believe that income had escaped assessment. Consequently, the Tribunal held that the proceedings under Section 147 of the said Act were invalid.*
>
> > *8. The Tribunal gave detailed reasons for concluding that the proceedings under Section 147 were invalid. Instead of adding anything to the said reasons, we think it would be appropriate if the same are reproduced:—*
> >
> > *"In the case at hand, as is seen from the reasons recorded by the AO, we find that the AO has merely stated that it has been informed by the Director of Income-tax (Inv.), New Delhi, vide letter dated 16.06.2006 that the above named company was involved in giving and taking bogus entries/transactions during the relevant year, which is actually unexplained income of the assessee company. The AO has further stated that the assessee company has failed to disclose fully and truly all material facts and source of these funds routed through bank account of the assessee company. In the reasons recorded, it is nowhere mentioned as to who had given bogus entries/transactions to the assessee or to whom the assessee had given bogus entries or transactions. It is also nowhere mentioned as to on which dates and through which mode the bogus entries and transactions were made by the assessee. What was the information given by the Director of Income-tax (Inv.), New Delhi, vide letter dated 16.06.2006 has also not been mentioned. In other words, the contents of the letter dated 16.06.2006 of the Director of Income-tax (Inv.), New Delhi have not been given. The AO has vaguely referred to certain communications that he had received from the DIT(Inv.), New Delhi; the AO did not mention the facts mentioned in the said communication except that from the information gathered by the DIT (Inv.), New Delhi that the assessee was involved in giving and taking accommodation entries only and represented unsecured money of the assessee company is actually unexplained income of the assessee company or that it has been informed by the Director of Income-tax (Inv.), New Delhi vide letter dated 16.06.2006 that the assessee company was involved in giving and taking bogus entries/transactions during the relevant financial year. The AO did not mention the details of transactions that represented unexplained income of the assessee company. The information on the basis of which the AO has initiated proceedings u/s 147 of the Act are undoubtedly vague and uncertain and cannot be construed to be sufficient and relevant material on the basis of which a reasonable person could have formed a belief that income had escaped assessment In other words, the reasons recorded by the AO are totally vague, scanty and ambiguous. They are not clear and unambiguous but suffer from vagueness. The reasons recorded by the AO do not disclose the AO's mind as to what was the nature and amount of transaction or entries, which had been given or taken by the assessee in the relevant year. The reasons recorded by the AO also do not disclose his mind as to when and in what mode or way the bogus entries or transactions were given or taken by the assessee. From the reasons recorded, nobody can know what was the amount and nature of bogus entries or transactions given and taken by the assessee in the relevant year and with whom the transaction had taken place. As already noted above, it is well settled that only the reasons recorded by the AO for initiating proceedings u/s 147 of the Act are to be looked at or examined for sustaining or setting aside a notice issued u/s 148 of the Act. The reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No addition can be made to those reasons. Therefore, the details of entries or amount mentioned in the assessment order and in respect of which ultimate addition has been made by the AO, cannot be made a basis to say that the reasons recorded by the AO*

were with reference to those amounts mentioned in the assessment order. The reasons recorded by the AO are totally silent with regard to the amount and nature of bogus entries and transactions and the persons with whom the transactions had taken place. In this respect, we may rely upon the decision of Hon'ble jurisdictional Delhi High Court in the case of CIT v. Atul Jain [2000] 299 ITR 383. in which case the information relied upon by the AO for initiating proceedings u/s 147 of the Act did indicate the source of the capital gain and nobody knew which shares were transacted and with whom the transaction has taken place and in that case there were absolutely no details available and the information supplied was extremely scanty and vague and in that light of those facts, the Hon'ble Jurisdictional Delhi High Court held that initiation of proceedings u/s 147 of the Act by the AO was not valid and justified in the eyes of law. The recent decision of Hon'ble jurisdictional High Court of Delhi in the case of Signature Hotels (P.) Ltd. (supra) also supports the view we have taken above."

9. We do not see any reason to differ with the view expressed by the Tribunal. No substantial question of law arises for our consideration. The appeals are dismissed. There shall be no order as to costs.

16.2 The Hon'ble Delhi High Court in the case of *Principal CIT vs G&G Pharma India Ltd. in ITA 545/2015* vide order dt. 08.10.2015 at paras 12 and 13 was held as follows:

"12. In the present case, after setting out four entries, stated to have been received by the assessee on a single date i.e. 10th Feb. 2003, from four entries which were received by the assessee on a single date i.e. 10th Feb. 2003, from four entries which were termed as accommodation entries, which information was given to him by the Director Investigation, the AO. stated: 7 have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has, introduced its own unaccounted money in its bank account by way of above accommodation entries'. The above conclusion is unhelpjul in understanding whether the AO. applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO., if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the assessee, which must have been tendered along with the return, which was filed on 14th November, 2004 and was processed u/s 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO. to have simply concluded: 'it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries'. In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decision discussed, the basic requirement that the AO. must apply his mind to the materials in order to have reasons to believe that the income of the assessee escaped assessment is missing in the present case.

13. A perusal of the reasons recorded demonstrate total non application of mind by the AO. Thus applying the proposition laid down by the Jurisdictional High Court in G&G Pharma India (supra) we hold that the reopening of assessment is bad in law"

16.3 The Hon'ble Delhi High Court in the case of *Signature Hotels (P) Ltd. vs ITO and another*, reported in 338 ITR 51 (Delhi) has under similar circumstances held as follows:

"For the AY. 2003-04, the return of income of the assessee company was accepted u/s 143(1) of the Income-tax Act, 1961 and was not selected for scrutiny. Subsequently, the

Assessing Officer issued notice u/s 148 which was objected by the assessee. The Assessing Officer rejected the objections. The assessee company filed writ petition and challenged the notice and the order on objections.

The Delhi High Court allowed the writ petition and held as under: '(i) Section 147 of the Income-tax Act, 1961, is wide but not plenary. The assessing Officer must have 'reasons to believe' that income chargeable to tax has escaped assessment. This is mandatory and the 'reason to believe' are required to be recorded in writing by the Assessing Officer.

(ii) A notice u/s 148 can be quashed if the 'belief is not bona fide, or one based on vague, irrelevant and non-specific information. The basis of the belief should be discernible from the material on record, which was available with the Assessing Officer when he recorded the reasons. There should be a link between the reasons and the evidence material available with the Assessing Officer.

(iii) The reassessment proceedings were initiated on the basis of information received from the Director of Income-tax (Investigation) that the petitioner had introduced money amounting to Rs.5 lakhs during F.Y.2002-03 as stated in the annexure. According to the information, the amount received from a company, S, was nothing but an accommodation entry and the assessee was the beneficiary. The reasons did not satisfy the requirements of section 147 of the Act. There was no reference to any document or statement, except the annexure. The annexure could not be regarded as a material or evidence that prima facie showed or established nexus or link which disclosed escapement of income. The annexure was not a pointer and did not indicate escapement of income.

(iv) Further, the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. There was no dispute that the company, S, bad a paid up capital of Rs. 90 lakhs and was incorporated on January 4, 1989, and was also allotted a permanent account number in September 2001. Thus, it could not be held to be a fictitious person. The reassessment proceedings were not valid and were liable to the quashed.

7.4. In the case of CIT vs Atul Jain reported in 299 ITR 383 it has been held as follows:

"Held dismissing the appeals, that the only information was that the assessee had taken a bogus entry of capital gains by paying cash along with some premium for taking a cheque for that amount. The information did not indicate the source of the capital gains which in this case were shares. There was no information which shares had been transferred and with whom the transaction had taken place. The AO. did not verify the correctness of information received by him but merely accepted the truth of the vague information in a mechanical manner. The A.O. had not even recorded his satisfaction about the correctness or otherwise of the information for issuing a notice u/s 148. What had been recorded by the AO. as his 'reasons to believe' was nothing more than a report given by him to the Commissioner. The submission of the report was not the same as recording of reasons to believe for issuing a notice. The A.O. had clearly substituted form for substance and therefore the action of the A.O. was not sustainable"

17. Applying the propositions of law laid down on above facts of the case, we have to hold that the re-opening of the assessment for the AY 2009-10 is bad in law.

18. Now, we take up the re-opening of assessment for the AY 2010-11.

19. The reasons recorded for re-opening are extracted for ready reference:

"In the instant case, a survey u/s 133A(1) of the I.T.Act, 1961 was conducted on 05.07.2016. The investigation revealed that the assessee has raised share capital amounting to ₹ 90,00,000/- during the F.Y. 2009-10 pertaining to the A.Y. 2010-11. The share subscriber companies were found to be non-existent at their registered addresses. The cash trail & information received from Investigation Wing, Kolkata revealed that the share capital was routed through accommodation entry providers. On the basis of survey findings, the CEO of the company was requested to offer his comments on routing of unaccounted cash amounting to ₹ 90 lacs through paper /shell companies under the garb of share capital. The CEO in his recorded statement stated that the Director would explain the same. Pursuant to survey operations, Statement of the Director of the assessee company was recorded on 13.07.2016, however, he was not able to prove the identity of the subscriber companies, their creditworthiness & genuineness of the share transactions. Therefore, the provisions of section 68 of the I.T.Act, 1961 is required to be invoked in this case.

In view of the above, I have reason to believe that ₹ 90,00,000/- chargeable to tax has escaped assessment for the A. Y. 2010-11."

20. Here also the assessee objected to the re-opening and then objections were disposed off by order dated 10.10.2017 by the AO.

21. A perusal of the reasons recorded, demonstrates the following:

a) Investigation revealed that the assessee raised share capital amounting to ₹90,00,000/-.
b) The share subscriber companies were found to be non-existence at their registered address.
c) Information received from investigation wing, Kolkata revealed that the share capital was routed through accommodation entry providers.
d) Director in his recorded statement was not able to prove the identity, creditworthiness and genuineness of the subscriber companies and the share transaction during the course of survey.

22. We find that the reasons recorded are not supported by any material. The recording that the share subscriber companies were found to be non-existence is not supported by any material. There is no report or evidence of any authority conducting spot verification, dates etc. The share applicant companies are all registered companies under the Companies Act and are having bank accounts as well as PAN nos. The assessee has raised share capital of ₹ 90 lakhs during the year and this was disclosed in the annual accounts attached with the income tax return. It is a recorded and disclosed fact. To record in the reasons that this was discovered during survey is not factually correct. A disclosed fact already on record cannot be discovered. Similarly the recording that information was received from the investigation wing is vague. No particulars are

given. The director has sought for time to provide details. It is not a case of failure to prove the identity etc. Identity, creditworthiness and genuineness of a transaction cannot be proved in spot enquiry during survey. Hence as in the case of reasons recorded for re-opening for AY 2009-10 the re-opening of assessment for AY 2010-11 is also bad in law.

23. We also find that there is no independent application of mind by the AO to the information received from the investigation wing. Suspicion cannot take place of proof or evidence. Though it is true that conclusive evidences need not be brought on record at the time of recording of reasons, there should be some verification which should lead to the formation of belief that income subject to tax has escaped assessment. Vague statement, wrong recording of facts in the reasons recorded for re-opening, render the re-assessment is bad in law.

24. Applying the propositions of law laid down in the case laws discussed while disposing off the case for AY 2009-10 to the facts of the case for AY 2010-11, we hold that the re-opening is bad in law.

25. In the result, the appeals of the assessee for both the assessment years are allowed.

Kolkata, the 04th December, 2019.

Sd/-	Sd/-
[S.S. Godara]	[J. Sudhakar Reddy]
Judicial Member	Accountant Member

Dated: 04.12.2019
Bidhan

Copy of the order forwarded to:

1. ***M/s. Mono Orion Food India Pvt. Ltd., 58, Chowringhee Road, Kolkata-700 071.***
2. ***DCIT, Circle-8(1), Kolkata.***
3. CIT(A)-3, Kolkata. (sent through e-mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through e-mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches