

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.As No.4731, 4732 & 4733/DEL/2016  
Assessment Years: 2008-09, 2009-10 & 2010-11

ITO, Ward-46(1), New Delhi.	vs.	Rajat Finvest, 5585, 2 <sup>nd</sup> Floor, Lahori Gate, Delhi.
TAN/PAN: AAJFR 3382B		
(Appellant)		(Respondent)

COs No. 314, 315 & 316/DEL/2016  
Assessment Year: 2008-09, 2009-10 & 2010-11

Rajat Finvest, 5585, 2 <sup>nd</sup> Floor, Lahori Gate, Delhi.	vs.	ITO, Ward-46(1), New Delhi.
TAN/PAN: AAJFR 3382B		
(Appellant)		(Respondent)

Appellant by:	Smt. Sulekha Verma, Sr.D.R.		
Respondent by:	S/Shri K Sampath, Adv., Aneesh Mittal, Adv. & Shreya Sharma, Adv.		
Date of hearing:	17	07	2019
Date of pronouncement:	12	09	2019

**ORDER**

**PER AMIT SHUKLA, JM:**

The aforesaid appeals have been filed by the Revenue and Cross Objections by the assessee against separate impugned orders of even date, 29.06.2016, passed by Ld. Commissioner of Income Tax (Appeals)-XVI, New Delhi for the quantum of assessment passed u/s.143(3)/147 for the

Assessment Years 2008-09, 2009-10 & 2010-11. Since issues involved in all the appeals are common, arising out of identical set of facts, therefore, same were heard together and are being disposed of by way of this consolidated order.

2. As a lead case, we are taking up the appeal for the Assessment Year 2008-09 and the finding given therein will apply *mutatis mutandis* in all the case, because the finding of the Assessing Officer and Ld. CIT (A) are exactly same permeating out of same set of facts. In the grounds of the appeal, the Revenue has raised following grounds:-

“1. On the facts and the circumstances of the case, whether the ld. CIT(A) has erred in law in deleting the addition of Rs.37,41,79,914/- held to be Long Term Capital Gain against treating it Short Term Capital Gain made by the Assessing Officer as deemed income u/s.68 of the Income Tax Act, 1961.”

2. Whereas in the Cross Objection, assessee has challenged the validity of reopening u/s.147.

3. The facts in brief *qua* the issue involved are that, assessee is a partnership firm engaged in the business of trading in shares and making investment in shares. During the year under consideration, the assessee had shown sales from shares held in stock-in-trade at Rs.18,18,09,303/- and Long Term Capital Gain from sale of M/s. REI Agro Ltd. of Rs.37,41,74,914/-, which was held in investment portfolio. The assessee had shown cost of acquisition of these shares at Rs.9,75,37,736/- and full value of consideration on sale of

such shares were declared at Rs.47,17,12,650/-. These shares were purchased in the Assessment Year 2007-08 and were sold during the year. The summary of share transaction with the date of purchase and sale are as under:

S.No	Name of company	Sale			Net value	Purchase			Long term capital gain
		Qty	Date	Value		Qty	Date	Value	
1	REI Agro Limited	2000	05.02.08	216410.98	216,410.98	2000	18.01.07	4,15092.05	1691318.93
2	REI Agro Limited	2000	05.02.08	2107976.09		2000	18.01.07	415092.05	1692884.04
3	REI Agro Limited	235000	06.02.08	233766328.42		26312 21906 11950 15000 89728 70104	18.01.07 19.01.07 19.01.07 22.01.07 23.01.07 23.01.07	5460951.04 4616916.93 2527979.52 3136174.10 18237159.52 1425821.8.45	185528928.86
						235000		48237399.56	
4	REI Agro Limited	235000	06.02.08	233731934.97		16571 57910 20000 100000 10000 30519	23.01.07 24.01.07 24.01.07 25.01.07 29.01.07 31.01.07	3370320.35 11852894.17 4101276.08 20661298.36 2102086.65 6382277.18	185261782.18
						235000		48470152.79	
	<b>TOTAL</b>	<b>474000</b>		<b>471712650.46</b>	<b>216410.98</b>	<b>474000</b>		<b>97537736.45</b>	<b>374174914.01</b>

3. The shares of REI Agro Ltd. at the time of purchase and sale was a listed company in stock exchange and the shares have been purchased and sold at the prevailing rate of the day quoted in the stock exchange and all the transactions have been done through broker, India Bulls Securities Ltd.

The assessee's case was reopened u/s.147 on the basis of information received from DIT (Inv.) that assessee-firm is introducing unaccounted income in the guise of bogus Long Term Capital Gain to the tune of Rs.37,14,74,914/-, Rs.2,29,30,711/- and Rs.59,24,97,148/-, in F.Ys. 2007-08, 2008-09 and 2009-10, respectively.

4. In response to the notice u/s 148, assessee has filed return of income on 7.12.2013 and stated that earlier return filed on 27.09.2008 to be treated as return filed in response to the notice u/s.148 and the said return was filed again by way of e-filing. After receiving the 'reasons recorded' the assessee raised objection for reopening the assessment, which has been rejected by the Assessing Officer vide letter dated 24.02.2014. The Assessing Officer in the assessment order has noted that a survey u/s.133A was carried out on 07.08.2012 in the case of M/s. REI Agro Ltd. by the Investigation Wing and statement of one of the employee REI Agro Group, Shri Brij Mohan Vyas, was recorded. The relevant extract of the statement as incorporated in the assessment order is reproduced hereunder, because this was one of the main reasons for the Assessing Officer to draw adverse inference:-

*"Q.10 Do you perform another role in the group companies of Sh. Sandeep Jhunjunwala?"*

*Ans. I am working in M/s Octal Suppliers Pvt. Ltd. Only, but if Sh. Sandeep Jhunjunwala depute me for some other work I have to do it.*

*Q.16 There is BBM message received in your blackberry phone at 10.22 AM on 26-07-2012 from SKJINTL. I am showing you the message received by you and the reply sent by you on the same date at 10.27 A.M. Please go through the message and confirm the same and answer following questions:-*

- a) Who is SKJINTL'?*
- b) In what context message was sent to you?*
- c) What is shailini account as shown in your reply?*

*Ans. Yes I confirm that I have received the message as stated by you above on the time and date as explained above on my blackberry phone.*

- a) 'SKJINTL' means sh. Sandeep Kumar Jhunjunwala. He has sent these messages.*
- b) He has asked to buy the shares of REI Agro from Shailini account and I have purchases the same.*
- c) The shalini account means Shailini Metals Pvt. Ltd. It belongs to Mr. Manoj Jadone. I asked Mr. Manoj Jadone to purchase those shares and he agreed to do so.*

*Q.17 As discussed in question no. 16, there are a number of messages received from SKJINTL i.d. on your BBM. In all these messages there are various instructions given to you for either purchase or sell of shares of REI Agro Ltd. And REI 6 TEN Ltd. in account of various brokers and group companies. On perusal of these messages it is seen that instructions are very frequent answer following question:-*

- a) Why these instructions were given to you only?*
- b) What is the reason that these instructions are so frequent?*
- c) It is learnt that above discussed two companies are listed companies then how price of shares are decided by SKJINTL?*

d) It is also seen from the instructions that transactions are belong undertaken in group companies account and broker's account of group companies. In this context please explain the purpose behind such trading.

Ans. Yes I confirm that I have received the messages as stated above. The point wise reply of above question are as under:

a) I am trusted aide of sh. Sandeep Jhunjhunwala and the sole person to whom he gives directions for purchase and sale of shares of REI Agro Ltd and REI 6 TEN Ltd. in account of various brokers and group companies.

b) Whenever he thinks right time to buy or sell the shares of such companies, he give such instructions to me.

c) The companies have issued right issues at Rs. 19.50/-. Now the rate is down so we are increasing our promoter's stake. **We control and drive up the price of shares of maintain the rates for the interest of shareholders/investors.**

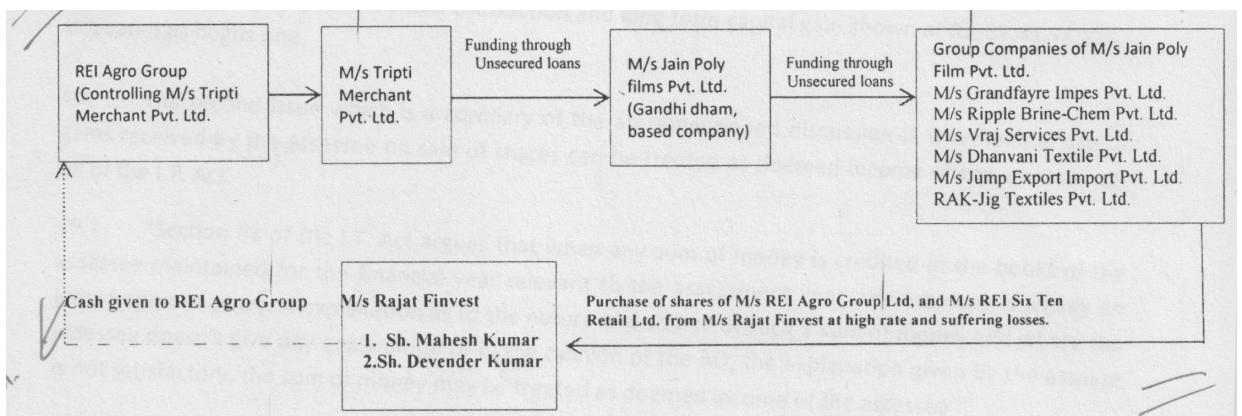
d) We do so to maintain the rate of shares.

Q.18 From the response given at Q.No. 17 above, it can be concluded that the trade volume effected during various transaction in shares of REI Agro Ltd. Through the group companies and brokers is more than 5% norm of SEBI. Please confirm the same.

Ans. It is under 5% as per norms. The other concerns with whom we are interacting with, are not within our control. But we are influencing them to protect the interest of investors & shareholders."

5. The Assessing Officer further noted that the assessee had made transaction of shares of 6 Gujarat based Companies through brokers and these companies have incurred huge losses on purchase of shares of M/s. REI Group. Detail of these companies who have incurred losses on

account of share trading right from the Financial Years 2008-09 to 2011-12 have been incorporated in paragraphs 5 and 6 of the assessment order. He further noted that these companies did not have substantial capital as appearing in the balance-sheet except for unsecured loan taken from M/s. Jain Poly Films Ltd. and also the unsecured loan taken from these companies. He again noted that the money in the balance sheet of M/s. Jain Poly Films Ltd. is coming in the form of unsecured loan from Kolkata based company M/s. Tripti Merchant Pvt. Ltd. and based on this he has tried to draw a fund flow statement.



6. He has also referred to the report of Investigation Wing, Gandhidham in the following manner:-

*“11.. The investigation wing, Gandhidam in its report dated 31-01-2013 has reported that Sh. Manoj Singh Jadoun is the acting director in M/s Jain Poly Film Pvt. Ltd., M/s Grandfayre Impex Pvt. Ltd, M/s Ripple Brine-Chem Pvt. Ltd, M/s Vraj Services Pvt. Ltd, M/s Dhavani Textile Pvt. Ltd, M/s Jump Export Pvt. Ltd. and M/.s Rak Jig Textiles Pvt. Ltd and all these companies are group concerns. It is further reported that sh. Manoj Singh Jadoun was confronted with about the transactions made with REI Agro Ltd.*

*and was asked why any company would give unsecured loans without any collateral to which he replied that he is known to Sh. Suresh Agarwal, director of M/s Tripti Merchant Pvt. Ltd. The Investigation wing, Gandhidham has further reported that Sh. Manoj Singh Jadoun was asked about the reason for purchase of shares of REI Agro Ltd. at very high prices and consequently suffering huge losses, to which he stated that his companies had taken advice from director of M/s Tripti Merchants Pvt. Ltd. regarding investments to be made in shares in return they are bearing losses with his companies.”*

7. He has also incorporated the statement of Shri Manoj Singh Jadoun and has further observed that no information was received in response to notice u/s.133(6) to provide the name and address of the parties to/from shares of M/s. REI Group were purchased and sold during the year. Thereafter, he treated the entire trading in shares and result in Long Term Capital Gain as bogus and treated as a deemed income u/s.68.

8. Thereafter, on one very important observation made by the AO is that, during the Assessment Year 2008-09, assessee has declared trading in shares of M/s. REI Agro Ltd and has also transferred its shares of M/s. REI Agro Ltd from opening stock and was converted into investment. He further observed that it was not shown as to how shares were transferred in investment portfolio and on what rate. The Assessing Officer then issued show cause notice and in response the assessee has filed the copy of audited account for the Assessment Year 2007-08, from where AO noted that no investment in shares

has been reflected in the balance sheet. The reply of the assessee as incorporated in the assessment order reads as under:-

*"The assessee firm was doing business as well as investment on Long Term Basis in AY '-08 and thereafter. The assessee firm was maintaining Books of Accounts accordingly. The assessee firm was maintaining books accordingly. In the finalization of Balance Sheet, Profit & Loss A/c and in preparation of Return the Purchases and Stock in Hand alongwith Investment Stock in Hand has been consolidated wrongly. In the Financial year 2006-07 (AY 2007-08), the Books of Accounts have separate ledge A/c's in respect of following:*

<i>Purchase (Investment) A/c</i>	<i>Rs.13,38,77,337.66</i>
<i>Purchases</i>	<i><u>Rs. 27,84,14,870.14</u></i>
	<i>Rs.41,22,92,207.80</i>
<i>Less: Services Charges</i>	<i>Rs. <u>37,370.67</u></i>
	<i><u>Rs.41,22,54,837.13</u></i>

*The same has been shown under the head "Purchase A/c's in Profit & Loss A/c wrongly. Copies of Profit & Loss A/c and Balance Sheet for the F. Y 2006-07 are enclosed herewith. Further, the stock in hand (Trading) as well as stock Investment A/c has been wrongly merged as follow:-*

<i>Stock in Hand (Trading)</i>	<i>Rs.16,66,59,460.93</i>
<i>Stock (investment)</i>	<i><u>Rs.13,38,77,337.75</u></i>
	<i><u>Rs.30,05,36,798.68</u></i>

*However, the same was rectified in F. Y 2007-08 (AY 2008-09) through reflecting in profit & Loss A/c under the heading Opening Stock, Hence, there is no conversion of stock-in Trade into investment Ac/ but rectification of error already made.*

*Although in Assessment year 2008-09, the shares worth Rs. 6,92,70,422/- shown as Stock- in-trade has been converted into Investment A/c through deduction from purchases. Details of such conversion is enclosed herewith.*

*The shares converted during the year have not been sold during the year concerned and has been included in Investment stock in hand as on 31/3/2008. Hence there was no Gain on this in the year concerned. Even these shares converted from Stock in trade to Investment have not been sold in AY 2009-10. Hence, treating these Gain in AY 2010-11 cannot be termed as Short term Capital Gain as holding of shares were more than one year.*

*Although there is no short term capital gain, but if we considered the income tax provisions and judgments in respect of conversion of stock-in-trade to Investment even though conversion date is taken on 01/04/2007.*

*a) There is specific provision u/s 45(1) of the Income-tax Act, 1961 for the treatment of value/date for conversion of capital asset into stock-in-trade, but there is no specific provision under Income- tax Act, 1961 for vice versa i.e. Conversion of Stock in trading into Capital Asset.*

*b) When there is no specific provisions for conversion of stock in trade into capital asset, then the question arises what is cost of acquisition i.e whether the cost of capital asset is the cost of asset when acquired or the fair value of capital asset on the date when it is converted from stock-in-trade to capital asset. Further what will be the date of acquisition of capital asset i.e. whether the date of acquisition of capital asset is the date when that asset is acquired or when the asset is converted into capital asset.”*

9. Not satisfied with the assessee's reply, he held that assessee is having a stock during the financial year 2006-07 amounting to Rs.13,38,77,337/- is not borne out and even

there was a mistake, the same have been rectified earlier and accordingly, he held that the Long Term Capital Gain shown by the assessee should be treated as Short Term Capital Gain on the ground that assessee is not having any opening stock in the investment portfolio as on 01.04.2007 and how stock-in-trade was converted into investment during the year, and therefore, period of holding of investment has to be reckoned as less than a year and accordingly assessee is taxable as Short Term Capital Gain. However, he held that, since, he has already made the addition treating the Long Term Capital Gain as income from undisclosed source u/s.68, therefore, he is not proceeding to make the addition on account of treating the transaction of shares as Short Term Capital Gain.

10. Ld. CIT (A) after considering the entire facts on record and material produced before him has deleted the said addition by holding that the sale of shares of M/s. REI Agro Ltd. was genuine. The main conclusion and finding of the Ld. CIT (A) is reads as under:-

*“The appellant, has in the nutshell argued, that all evidence in support of genuineness of the transaction with respect to sale of shares have been produced before the Assessing Officer as well as during the appellate proceedings. The copies of contract notes, invoices and copies of accounts of the brokerage firm have been submitted. The transactions have been through accredited brokerage firm, the sale consideration as moved through banking channels the shares have been quoted as National Stock Exchange and have been transacted as per the price on that date. Further the broker has charged “Securities Transaction Tax” on these transactions. On the other hand the*

*Assessing Officer has not been able to controvert any of the evidence submitted by the appellant. The Assessing Officer has a very strong suspicion with regard to genuineness of the share transaction and earning of capital gain. But however strong a suspicion may be it cannot dislodge the evidence available. The whole case of the Assessing Officer is based on the statement of one Sh. Brij Mohan Vyas. But even his statement cannot erase the evidence submitted by the appellant. The Assessing Officer has not been able to place on record any concrete evidence which could prove conclusively that the sale of shares of M/s RE1 Agro Ltd and M/s RE1 Six Ten Ltd are bogus. In the absence of any evidence to the contrary, the claim of the appellant with respect to sale of shares of M/s RE1 Agro Ltd, is held to be genuine.”*

11. On the issue of alternative conclusion that the period of holding investment held by the Assessing Officer is less than a year, he after incorporating the date of purchase and date of sale held that, clearly the shares were held for more than a year, and therefore, assessee has rightly shown as Long Term Capital Gain.

12. Before us, ld. CIT-DR strongly relied upon the finding of the Assessing Officer and held that there was an information by the Investigation Wing as to how the price of shares of REI Agro Limited was managed and Ld. CIT(A) has not given any detailed finding with regard to each and every observation of the Assessing Officer. He also strongly relied upon the various judgments in his written submission. However, these judgments are not referred to or relied upon as many as 17 judgments and further the judgment of Hon'ble Supreme

Court in the case of Durga Prasad More, 82 ITR 540 and Sumati Dayal, 214 ITR 80<sup>1</sup> and catena of other decisions. All these judgments are not being discussed, firstly, for the reason that most of the judgments are on account of cash credit relating to share capital/share application money which has no relevance on the facts of the present case.

13. On the other hand, ld. counsel for the assessee strongly relied upon the order of the ld. CIT (A) and submitted that there is no evidence or material for any collusion between assessee and the company whose shares have been transacted. Even heavy reliance has been placed on the statement of Shri Brij Mohan Vyas, an employee of a company is mostly general and no incriminating or adverse inference can be drawn from such statement. Moreover, no deposition has been made against the assessee. All the purchases have been made through stock exchange and assessee has purchased the shares in the earlier Assessment Years which was duly disclosed in the books of account and were purchased through account payee cheques. If assessee is a trader in shares and has dealt in thousands of scrip, that does not mean that for one particular scrip, assessee was involved in some bogus accommodation entry. The assessee has submitted all the details of purchases made through stock exchange, like contract notes, invoices, copies of account of broker firm and also how the purchases and sales have been done through National Stock Exchange and consideration has been paid through banking channels. The

broker has charged securities transaction tax on these transactions and Assessing Officer has not been able to controvert any of these evidences. Thus, order of Ld. CIT(A) should be confirmed.

14. We have heard the rival submissions and perused the relevant findings given in the impugned order as well as material referred to before us. It is an undisputed fact that assessee-firm is engaged in the business of trading in shares and also made investment in shares from where assessee had shown huge business income and also shown capital gain. One of the facts noted by the Assessing Officer in the assessment order is that during the Assessment Year 2008-09 assessee has declared profit from trading in shares of REI Agro Ltd. and also during the year assessee has transferred opening stock and purchased shares of REI Agro India under investment portfolio. The assessee had shown separate ledger account in respect of purchases made under investment account of Rs.13,38,77,337/- and had also shown purchases of Rs.27,84,14,870/- under stock-in-trade for trading purpose from which assessee has declared income of Rs.16,66,59,460/- and stock (investment) has been disclosed at Rs.13,38,77,338/-. Now, in so far as trading of shares is concerned, no adverse inference has been drawn by the Assessing Officer.

15. The assessee's case has been reopened u/s.147 on the basis of some information received from Investigation Wing

that the assessee has generated some bogus Long Term Capital Gain in collusion with M/s. REI Agro Ltd. However, no such evidence or material has been brought on record nor there is any report with regard to nature of collusion implicating the assessee that it was involved in any of such collusion with M/s. REI Agro Ltd. for generating bogus Long Term Capital Gain. Strong reliance has been made by the Assessing Officer with regard to the statement of Shri Brij Mohan Vyas, an employee of REI Agro Group during the survey carried out on 07.08.2012 on REI Agro Ltd. The relevant extract of the statement has already been incorporated above. From plain reading of the statement, nowhere it is borne out that whether the company was into manipulating of share prices in the stock exchange. He only refers to how one, Sandeep Kumar Jhunjunwala has asked to buy the shares of M/s. REI Agro and what is the right time to buy and sell the shares of such company. One highlighted portion by the Assessing Officer on which adverse inference has been drawn is that the companies have issued right issues at Rs.19.50/- and now the rate is down so we are increasing our stake and we are controlling and driving the shares to maintain the rates for the interest of shareholders. This statement only refers that the company tries to see that the share price does not fall in the interest of the shareholders, nowhere it has been said that the company was involved in rigging the price in the stock exchange. Another fact the Assessing Officer had noted and has drawn adverse

inference is that assessee had made transaction of shares of some of the Gujarat based companies, who in their balance sheet have shown losses on account trading of share of this company. He is trying to demonstrate that how funds were flowing from REI Agro Group on account of unsecured loans to various 6 companies who have purchased shares from the assessee and thereafter purely on hypothetical presumption and without any material on record, he has assumed that cash must have been given to REI Group Agro. How the entire fund flow chart has been linked with assessee to adverse inference is not clear. If REI Agro Group has funded certain companies through loan and if these six companies have purchased shares from the assessee and then have suffered losses, then how it can be inferred that there was some kind of collusion of assessee. First of all, it is not clear that these companies have incurred losses merely on trading of shares of REI Agro Group; and secondly, if the entire transaction is through National Stock Exchange had traded on quoted market price, then how it can be inferred that the Long Term Capital Gain claimed by the assessee was on account of dumping of losses in the books of some Gujarat based companies. There has to be some material or inquiry wherein assessee has been found to be involved directly or indirectly either in rigging of price of REI Agro Group or was in some kind of collusion for such accommodation entries.

16. One another angle which can be seen is that, nowhere the Assessing Officer has stated that the shares of the REI

Agro Group have jumped astronomically within a short period; or REI Group has been black listed either by the SEBI or by the Stock Exchange for any kind of price manipulation or any kind of action has been taken. The Assessing Officer has not even brought on record that REI Agro had no substantial financial worth which can justify the share price. The shares of REI Agro Ltd. is a freely traded share in stock exchange where the millions are trading in these shares regularly as brought out by the Id. counsel at the time of hearing. When assessee has purchased these shares for the trading purpose in the earlier years, which has been accepted by the Department; and if part of the same scrip has been converted into investment and sold during the year, then can it be held that part of the transaction is a bogus transaction so as to invoke deeming fiction of Section 68. The purchases of shares have not been doubted by the Assessing Officer, as he has taxed only the net capital gain. If these shares were reflected in the books of account of the earlier years acquired as stock-in-trade, which has been sold through stock exchange after paying STT and the money has been received through banking channels, then how it can be inferred that shares were purchased and sold by way of some bogus entry. If the credits in the bank account and in the books are from sale of an asset or stock then same cannot be added u/s.68. The entire premise of the Assessing Officer is based on some investigation report, wherein there is only presumption drawn that, since some Gujarat Company have purchased the

shares who have incurred losses and were being funded through various routes on account of unsecured loan, therefore there must be some collusion. But such a report does not lead to any kind of inference against the assessee that the assessee was involved in either of these chains of companies to route any unaccounted money. It is not a case here where there is one instance of sale and purchase of particular share which has been sold during the year, but here it is a case where assessee is a trader in shares who has dealt in several scrips and even showing business income from such trading of shares and also dealing in investment of shares.

17. In one of the statement of Shri Manoj Singh Jadoun which has been recorded by the investigation wing, as incorporated in the assessment order, it is seen that a specific question was asked vide question no.20 as to why and what was the reason for purchase of share of REI Agro Ltd. on a very higher price and secondly on suffering of losses by a group of companies. The said question and reply reads as under:

*“Q.20 What was the reason of purchase of shares of REI Agro Ltd at very high prices and consequently suffering losses by your group companies?”*

*Ans. Sir, these companies have made investment in the shares of REI Agro Ltd with the intention to earn profit and the same was purely a business decision and on the basis of study of the share market. However, sometimes we had taken advice from director of M/s. Tripti Merchants Pvt. Ltd regarding investment to be made in*

*shares. In returns, they are bearing with us in losses made by my companies.*

*Q. 22. The fact that you have taken unsecured loan without any interest and also incurred huge losses. Does this suggest that you are buying these shares at the instance of parties who are giving loan to you.*

*Ans. No, Sir, the whole purchases are purely business decision to earn the profit. However, sometimes we had taken the advice of from Director of M/s. Tripti Merchants Pvt. Ltd. regarding investment to be made in shares.”*

Here again, no adverse inference from such a statement can be drawn, as it has been categorically said that the Gujarat based companies have made investment in REI Group with an intention to earn profit and same was purely a business decision and on the basis of study of share market and sometime advice is taken from Director of M/s. Tripti Merchants Pvt. Ltd. regarding investment to be made in the shares and these companies have also dealt and made investment in shares purely out of decision to earn profit. Now to draw adverse inference that the dealing in shares were due to some kind of collusion for generating loss in the books of Gujarat Companies is too farfetched. We are unable to appreciate as to how the Assessing Officer is trying to draw a possible link of any kind of accommodation entry of bogus Long Term Capital Gain on purchase and sale of shares of REI Agro Ltd. As noted by the Ld. CIT (A) and also borne out from the record is that, all the transactions have been undertaken through accredited brokerage firm through

national stock exchange and all the details of contract notes, invoices, copies of account of brokerage firm have been submitted; and none of the purchases have been done off-line as all have been done through stock exchange in the normal course of business at a quoted price on the date. Thus, there is no infirmity in the order and finding of the Ld. CIT (A) and same is confirmed and addition made by the Assessing Officer is thus directed to be deleted.

18. Since similar addition has been made and on same reasoning and facts, the Ld. CIT (A) has allowed the assessee's appeal following his own order for the Assessment Year 2008-09, therefore, in view of our aforesaid reasoning and finding the impugned order of the Ld. CIT (A) for the Assessment Years 2009-10 and 2010-11 is confirmed and the addition made by the Assessing Officer is deleted.

19. Since, we have already deleted the addition on merits, therefore, we are not going into the validity of reopening u/s.147, as it has become purely academic and is kept open. Accordingly, Cross Objections raised by the assessee are dismissed as infructuous.

20. In the result, the appeals filed by the Revenue is dismissed and Cross objections filed by the assessee are dismissed as infructuous.

**Order pronounced in the open Court on 12<sup>th</sup> September, 2019.**

**Sd/-**

**[PRASHANT MAHARISHI]  
[ACCOUNTANT MEMBER]**

**Sd/-**

**[AMIT SHUKLA]  
JUDICIAL MEMBER**

DATED: 12<sup>th</sup> September, 2019

PKK: