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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 12.01.2023

+ **ITA 13/2023**

PR. COMMISSIONER OF INCOME TAX-10 Appellant

Through: Mr Zoheb Hossain, Mr Vipul
Agarwal & Mr Parth Semwal,
Advocates.

versus

M/S. RAJAT FINVEST Respondent

Through: None.

+ **ITA 14/2023**

PR. COMMISSIONER OF INCOME TAX-10 Appellant

Through: Mr Zoheb Hossain, Mr Vipul
Agarwal & Mr Parth Semwal,
Advocates.

versus

M/S. RAJAT FINVEST Respondent

Through: None.

+ **ITA 15/2023**

PR. COMMISSIONER OF INCOME TAX-10 Appellant

Through: Mr Zoheb Hossain, Mr Vipul
Agarwal & Mr Parth Semwal,
Advocates.

versus

M/S. RAJAT FINVEST Respondent

Through: None.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J (ORAL):

CM APPL. 1300/2023 in ITA 13/2023**CM APPL. 1301/2023 in ITA 14/2023****CM APPL. 1302/2023 in ITA 15/2023**

1. These are the applications filed on behalf of the appellant/revenue seeking condonation of delay in re-filing the appeals.

1.2 For the reasons given in the applications, the delay in re-filing the appeals is condoned.

1.3 The applications are accordingly disposed of.

ITA 13/2023, ITA 14/2023 & ITA 15/2023

2. These appeals, filed by the appellant/revenue, are directed against the common impugned order dated 12.09.2019 passed by the Income Tax Appellate Tribunal [in short “Tribunal”]. The impugned order concerns Assessment Year (AY) 2010-2011 [ITA 13/2023], AY 2009-2010 [ITA 14/2023] and AY 2008-2009 [ITA 15/2023].

3. The main allegation against the respondent/assessee is, that it has introduced unaccounted income in its books in the guise of “bogus Long Term Capital Gains” [“LTCG”].

3.1 The LTCG, as per the Assessment Order dated 31.03.2015, which were registered by the respondent/assessee in each of the AYs is the following:

	Assessment Year (AY)	Amount
1.	2008-09	Rs. 37,41,74,914/-
2.	2009-10	Rs. 2,29,30,711/-
3.	2010-11	Rs. 59,24,97,150/-

4. In order to adjudicate upon the appeals, the following broad facts are required to be noticed:

4.1 On 07.08.2012, a survey was carried out by the appellant/revenue in exercise of powers under Section 133A of the Income Tax Act, 1961 [in short, “the Act”], and according to the appellant/revenue, during investigation, the aforementioned fact was revealed i.e., that the respondent/assessee had introduced unaccounted income in its books of accounts in the guise of LTCG to the extent indicated hereinabove, *albeit*, by first investing and then selling the shares of two entities i.e., REI Agro Ltd. [in short, “REI”] and REI Six Ten Ltd. [in short, “REI Six”].

5. The respondent/assessee, against the LTCG, had claimed exemption from tax.

6. It is not in dispute, that REI is a listed company, and its shares were transacted on the stock exchange.

7. The facts also show, that during the course of the survey on 07.08.2012, the statement of one Mr Brij Mohan Vyas was recorded.

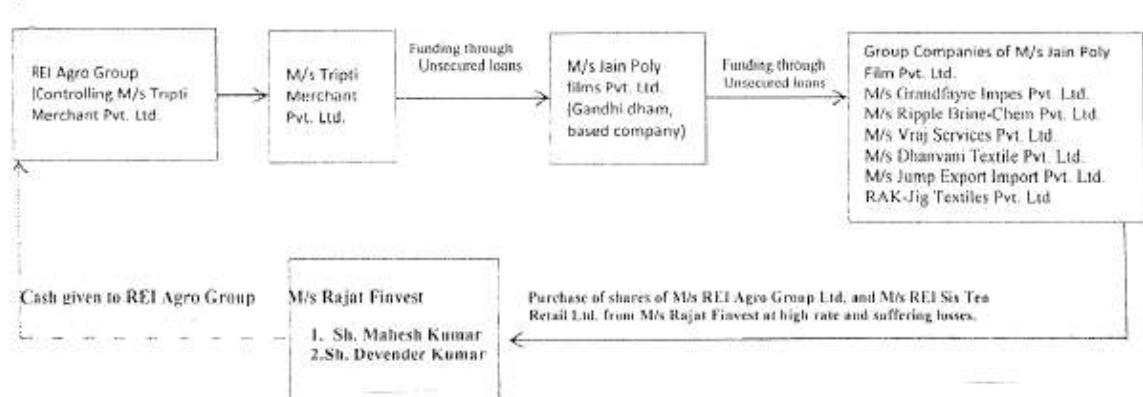
7.1 Mr Brij Mohan Vyas, according to the appellant/revenue, is an employee of REI Agro Group.

8. It has also emerged, that the respondent/assessee is in the business of trading and investing in scrips. The shares of REI were bought and sold through brokers, on instructions of one Mr Sandeep Kumar Jhunjunwala.

9. We may also note, that Mr Brij Mohan Vyas, in his statement, had indicated that he was working in Octal Suppliers Pvt. Ltd, and used to buy and sell shares on instructions of Mr Sandeep Kumar Jhunjunwala.

10. The Assessing Officer has relied upon the details gathered by the Investigation Wing, to conclude that the respondent/assessee had introduced its unaccounted income to purchase and sell shares of REI. These details are set forth in the form of a flow chart in paragraph 5 of the Assessment Order

in ITA 14/2023. For the sake of convenience, the said chart is set forth hereafter:



11. Thus, based on the information gathered by the Investigation Wing, the Assessing Officer concluded, that the entire set of transactions was a ‘sham’, and that the same had been configured to give the sale and purchase of shares by the respondent/assessee a legal framework.

12. It is important to note, that the Assessment Order was passed pursuant to reopening of assessment of the respondent/assessee under Section 148 of the Act.

13. Being aggrieved, the respondent/assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals) [in short, “CIT(A)’].

14. The CIT(A) via order dated 29.06.2016 partly allowed the respondent/assessee’s appeals.

15. This time around, the appellant/revenue was aggrieved, and hence, an appeal was preferred to the Tribunal.

16. The Tribunal considered the matter in great detail, and examined, as it appears from the record, various facets put forth before it, including the information as regards the fund flow gathered by the Investigation Wing, which was adverted to *inter alia* in paragraph 5 of the order passed by the

Assessing Officer. The Tribunal, however, came to the conclusion that the order passed by the CIT(A) had to be confirmed. For the sake of convenience, the relevant observations made by the Tribunal are hereafter:

"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 shores 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 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 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 stakes 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 ld. 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 no 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 at 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 thaes[sic: these] Gujarat based companies have made investment in REI Group with an intention to earn profit and same was purely a business derision 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 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”

17. What is obvious to us on a perusal of the record, is that both the CIT(A) and the Tribunal have returned findings of fact.
 - 17.1 The important fact is, that the respondent/assessee traded in shares and the respondent had converted a part of its stock-in-trade as investment.
18. In AY 2008-09, the respondent/assessee had declared profit from trading in shares of REI, and during that very year, the said shares were transferred to opening stock and were purchased under investment portfolio.
19. The statement made by Mr Brij Mohan Vyas on 07.08.2012 did not reveal that REI was manipulating share prices on the stock exchange.
20. According to the Tribunal, the involvement of Mr Sandeep Kumar Jhunjunwala, based on whose instructions Mr Brij Mohan Vyas acted, was to the extent as to the right time when shares of REI had to be bought and sold.
21. The observation of the Assessing Officer, that the funds which flowed from REI in the form of unsecured loans to six companies, which were located in Gujarat, were unaccounted income of the respondent/assessee, appears to be based on assumptions and/or conjectures. We were shown no material to back the conclusion arrived at by the AO.
22. According to us, the appellant/revenue could not have bifurcated the purchase and sale transactions. Concededly, when the shares were

purchased for trading purposes in earlier years, the profits so generated were accepted, and at the point in time, when these scrips were converted into investment and sold during the Assessment Years in issue, they could not be treated as bogus transactions.

23. The fact that shares were traded on stock exchange after paying securities transaction tax, and that money had been received through banking channels only demonstrated that they were not bogus transactions.

24. The statement of another gentleman i.e., Mohan Singh Jadoun, on which reliance was placed before us as well by Mr Vipul Agarwal, who appears for the appellant/revenue, according to the Tribunal, did not lead to an adverse inference.

25. According to us, the aforesaid observations made by the Tribunal are, in effect, findings of the fact.

26. There are concurrent findings of facts returned by the CIT(A) as well as the Tribunal.

27. The proposed questions of law by the appellant/revenue do not state that the findings returned by the Tribunal or the CIT(A) are perverse.

28. Thus, for the foregoing reasons, we are not inclined to interfere with the impugned order passed by the Tribunal.

29. The appeals are, accordingly, dismissed, as no substantial question of law arises for our consideration.

**(RAJIV SHAKDHER)
JUDGE**

**(TARA VITASTA GANJU)
JUDGE**

JANUARY 12, 2023/ ha