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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ ITA 129/2024 & CM APPL. 10566/2024  
PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Appellant

Through: Mr. Sanjay Kumar, Ms. Esha,  
Ms. Hemlata Rawat, Advs.

versus

R B FARMS AND ESTATES PVT. LTD. .... Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE PURUSHAINdra KUMAR**

**KAURAV**

**ORDER**

**21.02.2024**

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1. The instant appeal pertaining to Assessment Year 2015-16 impugns the order of the Income Tax Appellate Tribunal ["ITAT"] dated 21 October 2021.

2. Notice. Although the respondent is stated to have been placed on advance notice, none has appeared on its behalf when the matter was called. Consequently, let learned counsel for the appellant take steps for service through all permissible modes including via approved courier service.

3. Prima facie and for considering the issues which stand raised, we take note of the following conclusion as recorded by the ITAT:-

"20. It is an undisputed fact that before the ITSC, the group company M/s. AMP Motor Private Limited have taken a plea that it has been inflating purchases from which it has generated cash. We are of the opinion that the cash so generated has been reintroduced in the books of the assessee in the form of unsecured loan from the two companies. Since the group company has paid taxes on such inflated purchases, we do not find any reason why the same amount when re-introduced in the books should be taxed again."



4. Mr. Kumar, learned counsel draws our attention to the legal fiction which stands introduced in terms of Section 68 of the Income Tax Act, 1962 [“Act”] and contends that the ITAT has clearly erred in arriving at the aforementioned conclusion. Matter requires consideration.

5. We consequently admit the appeal on the following question of law:-

A. Whether on the facts and circumstances of the case and in law, the ITAT was justified in deleting the addition of Rs.10,37,50,000/- made by Assessing Officer [“AO”] under Section 68 of the Act and taken a wholly untenable view ?

6. List again on 29.04.2024.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J.**  
**FEBRUARY 21, 2024/neha**