THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

I.T.T.A.NO.537 OF 2015

JUDGMENT: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

This appeal under Section 260A of the Income Tax Act, 1961 ("the Act" for brevity), is preferred against the order of the Income Tax Appellate Tribunal, Hyderabad Bench 'B', Hyderabad (Tribunal), in I.T.A.No.834/Hyd/2009 dated 13.03.2015 whereby the penalty imposed by the Assessing Officer under Section 271(1)(c) of the Act was set aside to the extent the Assessing Officer added Rs.42,71,000/- to the total income of the assessee on account of share application money treating the same as unexplained cash credit under Section 68 of the Act.

The Tribunal relied on the judgment of the Bombay High Court in **CIT v. Bhimji Bhajni & Co.**[1], wherein cash credits were found in the books of the assessee; in the assessment proceedings, the assessee admitted existence of credits and stated that he was not in a position to produce the parties in whose favour the cash credits appeared; the Income Tax Officer worked out the amount of such peak credits and assessed the said amount as income of the said assessee; and he also imposed penalty under Section 271(1)(c) of the Act, which was cancelled by the Tribunal. On a reference, the Bombay High Court upheld the decision of the Tribunal holding that there was nothing on record to show that the amount of cash credits, added to the total income of the assessee, was the concealed income of the assessee from an undisclosed source. In the present case, the Tribunal held that the ratio of the judgment of the Bombay High Court was squarely applicable, to the facts of the case, as nothing has been brought on record by the Assessing Officer to show that the amount of share capital, added as unexplained cash credits under Section 68 of the

Act, represented undisclosed/concealed income of the assessee. Following the judgment of the Bombay High Court in **Bhimji Bhajni**[1], the Tribunal held that this was not a fit case to impose penalty under Section 271(1)(c) of the Act. The penalty imposed by the Assessing Officer, and confirmed by the CIT(A), was deleted and the appeal of the assessee was allowed.

It is not even contended before us that the aforesaid findings recorded by the Tribunal are based on no evidence or are perverse. The order of the Tribunal, following the judgment of the Bombay High Court, does not necessitate interference as no substantial question of law arises for consideration in this appeal necessitating its admission.

The appeal fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

2nd November 2015
RRB

[1] **146 ITR 145 (Bom)**