

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, HON'BLE JUDICIAL
MEMBER**

&

SHRI NAVEEN CHANDRA, HON'BLE ACCOUNTANT MEMBER

ITA No. **5724/DEL/2016**; Assessment Year: **2005-06**

M/s Cimmco Ltd R-805, 2 nd Floor, New Rajinder Nagar New Delhi- 60	Vs	ITO Ward- 6(2)
(APPELLANT)		(RESPONDENT)
PAN No.AAACC3147K		

Assessee Represented by :**None**

Department Represented by :**Ms. Monika Singh, CIT DR**

Date of Hearing: 02.02.2026	Date of Pronouncement: 02.02.2026
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ORDER

PER NAVEEN CHANDRA [A. M]:

The above captioned appeal is preferred by the assessee against the orders dated 19.08.2016, by Ld. CIT(A)-2, New Delhi, u/s 250(6) of the Income Tax Act, 1961 [hereinafter referred to as, "Act"] for A.Y. 2005-06.

2. This is a case of penalty u/s 271(1)(c). None appeared from the assessee side therefore, we decided to proceed ahead *ex-parte* with

the assistance of the Id DR. We heard the Ld. DR at length and perused the case record.

3. The assessee is a civil contractor and had filed a nil original return which was assessed at Rs 1,13,64,700/- u/s 143(3). The assessing officer, thereafter reopened and framed a re-assessment order u/s 143(3)/147 on 28.12.2011 disallowing the claim of Rs 1,04,81,261/- on account of write off capital Expenditure in P & L account. The said claim included an expense of Rs. 72,06,320/- as export benefits as non-recoverable and Rs. 32,72,941/- as security deposit which was disallowed by the AO u/s 36(i)(vii).

4. The AO has levied penalty on the said disallowance u/s 271(1)(c) and the Ld. CIT(A) has confirmed the same on account of the fact that there is no explanation from the assessee on inaccurate furnishing of particulars of income and the assessee had failed to prove that there is no fraud and neglect in filing of return of income.

4. The Ld. DR, before us stated that the Auditor had quantified the said expense as capital expenditure which was disallowed. The Id DR submitted that as the assessee filed inaccurate particulars, the penalty u/s 271(1)(c) was levied.

5. We have heard the submissions and perused the materials on record. We find that the disallowance was made as the AO considered the said expense as being capital in nature. We find that the assessee

considered the unrecoverable export benefits and security deposit on revenue account whereas the AO treated the same on the capital account. We find an expense being on revenue or capital account is subject of a different interpretation of law and is a "debatable issue," and therefore we are of the considered view that penalty u/s 271(1)(c) on such an addition is not warranted. In the instant case, we are of the view that the assessee may have made a wrong claim but not a false claim. There is a difference between wrong claim and a false claim. A false claim may invite punitive action of the Department. We are of the view that the AO has failed to establish that there is a false claim and that there is any concealment of income or there is any inaccurate particulars furnished by the assessee. Following the decision of Hon'ble Supreme Court of India, in the case of *Reliance Petro Products Ltd*, (2010) 322 ITR 158 (SC), we direct the AO to delete the penalty levied.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 02.02.2026.

-Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 11.02.2026

Pooja Mittal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

-Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi