

## REPLY OF NOTICE UNDER SECTION 274 READ WITH SECTION 271(1)(C) FOR PENALTY PROCEEDINGS

From,

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Dated .....

To,

The Assessing Officer,

Circle/Ward .....

Dear Sir/Madam,

Subject : Reply of Your Notice u/s 271(1)(c) for Penalty Proceedings

PAN No .....

My client ..... is in receipt of your notice dated .....u/s 274 read with section 271(1)(c) for Assessment Year ..... in respect of penalty for alleged concealment. I have been instructed to make the following submission :

(a) That the notice does not contain the particular of income alleged to have been concealed by my client. Possibly the reference is to the cash credit of Rs. .... in the name of and addition for low drawings amounting to Rs. .... which was held to be the income of my client in the assessment. If my client's presumption is incorrect, kindly inform the specific items of income allegedly concealed by my client.

(b) As regards the said cash credit I would like to submit that the loan confirmation was duly furnished with the Income Tax Return. However due to change of address the notice issued by you during assessment proceeding could not be served on the said loan creditor, My client has been able to contact the said party and the present address is as under :

We enclose herewith an **affidavit** from the said loan creditor, duly confirming the fact of their advancing loan to my said client (Annexure-1).

In case your honour desires to conduct a local enquiry or call the said loan creditor, it may be done. However, no penalty can be imposed merely because the said loan was considered as cash credit in the assessment. I would like to mention that the finding in assessment proceedings is not conclusive as held by the Supreme Court in the case of CIT Vs. Anwar Ali 76 ITR 696 (SC) . Therefore my client having discharges his primary responsibility to prove the genuineness of the loan, the levy of penalty without any material against my client is un-warranted and inconsistent with the provisions of law.

(c) Regarding alleged low drawings on the basis of which a sum of Rs. was added back to my client's income as income from other sources, I would like to state that the addition was made on mere estimate and without any material. Such addition cannot be a basis to treat my client having concealed particulars of his income or having furnished inaccurate particulars of his income. In this context, you have not considered the fact that my client's wife as well as his son is also assessed to Income Tax and they have separate drawings which is duly shown in their respective Income Tax files. The relevant details with PAN as also the copy of Balance Sheet and copy of acknowledgement for filing the return by my client's wife and his son is enclosed for your kind perusal ( annex. B,C and D respectively) . As my client was not specifically asked to give explanation on the issue of drawings,

these facts and evidences could not be submitted in course of the assessment proceedings. If the drawings of my client together with his wife and son is considered , the amount is adequate. Thus in the facts and circumstances of my client's case the addition for alleged low drawings was a result of lack of proper opportunity at assessment stage. Therefore there is no question of concealment of any income or furnishing of any inaccurate particulars.

Under the facts and circumstances of the case, you are requested to drop the penalty proceedings u/s 271(1) (c) and for this act of kindness, my client, as duty bound, shall ever pray.

Thanking you

Yours faithfully

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