Supreme Court of India
Union Of Aindia & Anr vs Banwari Lal Agarwal on 16 October, 1998
Bench: M.K.Mukherjee, B.N.Ktrpal

PETITIONER:
UNION OF AINDIA & ANR.

Vs.

RESPONDENT:
BANWARI LAL AGARWAL

DATE OF JUDGMENT: 16/10/1998

BENCH:
M.K.MUKHERJEE, B.N.KTRPAL

ACT:

HEADNOTE:

JUDGMENT:

ORDER Leave granted.

In respect of the Assessment Years 1978-79, 1979-80 and 1980-81 returns were filed by the respondent, after search and seizure had taken place under Section 132 of the Income-tax Act. Returns were filed belatedly and the assessments which were made were at a figure more than what was the returned income.

Prosecution was launched against the respondent alleging that he had committed an offence under Section 276-C of the said act, since his returns had been filed much after the date of search and he had wilfully attempted to evade tax chargeable or imposable under the Act.

The respondent thereafter moved an application under section 482 before the Allahabad High Court. It was contended before the Court that the assessment which was made was on the basis of a compromise arrived at between the respondent and the Income-tax Commissioner, Kanpur and there was also an understanding that no penal action would be taken against the respondent. A further contention which was raised was that before any prosecution is launched an opportunity of hearing should have been afforded. This contention was sought to be raised on the basis of the respondent's interpretation of sub-section(2) of Section

279. The High Court came to the conclusion that the assessment made was in pursuance of a mutual understanding therefore no penal action could be taken against the respondent and, further, that he was not afforded an opportunity to compound the matter under Section 279(2) prior to the institution of the prosecution and therefore it's initiation was not valid.

In our opinion the decision of the High Court is clearly without any legal basis. Firstly, it appears to be undisputed that there was a delay in filing of the returns. There does not seem to be an averment in the petition under Section 482, and certainly no discussion by the High Court, to the fact that the Income disclosed was much less than the income assessed. Furthermore, there is nothing on the record which could lead the High Court to the conclusion that any understanding was given to the respondent that no penal action could be taken. The learned counsel for the respondent is also unable to draw our attention to any provision of the Income-tax Act whereby a compromise assessment could have been arrived at between the respondent and the Commissioner of Income-Tax. The High Court, in our view, was clearly in error in proceeding to accept the said contention of the respondent's counsel. The question whether there was any understanding or not even if it could have been there, is one of the fact which will have to be proved before the Trial Court.

We further find that sub-secton(2) of Section 279 is a provision which enables the Chief Commissioner or the Director General to compound any offence either before or after the institution of proceeding. There is no warrant in interpreting this sub-section to mean that before any prosecution is launched either a show cause notice should be given or an opportunity afforded to compound the matter. The enabling provision cannot give a right to a party to insist on the Chief Commissioner or the Director General to make an offer of compounding before the prosecution is launched. The decision of the High Court is clearly untenable. The same is accordingly set aside and the application under Section 482 filed by the respondent before the High Court would accordingly stand dismissed. The Trial Court is now directed to proceed with the case in accordance with law as expeditiously as possible. The appeals are allowed.

Leave granted.