

**(2001) 11 P&H CK 0141****High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Miscellaneous No. 91 of 2001 26 November 2001 A.Y. 1984-85

B.R Anand, ITO

APPELLANT

Vs

Dashmesh Ice Factory and  
OthersRESPONDENT

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**Date of Decision:** Nov. 26, 2001**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 378
- Income Tax Act, 1961 - Section 276C

**Citation:** (2002) 174 CTR 44**Hon'ble Judges:** Jawahar Lal Gupta, J; Jawahar Lal Gupra, J; Ashutosh Mohunta, J**Bench:** Full Bench**Advocate:** R.P. Sawhney with Kishan Singh, for the Revenue None, for the Assessee, for the Appellant;

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**Judgement**

Jawahar Lal Gupta, J.

A complaint u/s 276C of the Income Tax Act, 1961, was filed by Mr. B.R. Anand, Income Tax Officer, B-Ward, Karnal. It was, inter alia, alleged that for the assessment year 1984-85 the firm had filed a return declaring an income of Rs. 23,020. The contents of the return were verified by Raj Kumar, accused No. 4. The assessing officer made certain additions and the taxable income was fixed at Rs.1,98,200. The accused were summoned. The charge was framed on 19-9-1994, only against Desh Raj, a partner of the firm. It was noticed by the court that two accused had expired during the pendency of the complaint. After recording evidence, the Trial Court found that Raj Kumar, accused No. 4 had verified the contents of the return. Desh Raj was not responsible "for the conduct of the business of the firm". Thus, he was acquitted.

2. Aggrieved by the order the present petition for the grant of leave to appeal has been filed u/s 378(4) of the Criminal Procedure Code. Even though, the case title has

been given as "B.R. Anand, Income Tax Officer, B-Ward, Karnal v. M/s. Dashmesh Ice Factory & Ors." the power of attorney in favour of the counsel has been signed by Mr. Ram Sharan, Income Tax Officer, Ward-I, Karnal, and not by the complainant. Irrespective of that we have heard Mr. R.P. Sawhney, learned counsel for the applicant.

3. The solitary contention raised by the learned counsel is that, even if Desh Raj was acquitted of the charge on the ground that he was not managing the affairs of the firm, the firm itself should have been punished. We have perused the record of the case (which had been summoned). It appears that the evidence produced by the complainant only indicated that the partner was responsible for filing inaccurate return. Two of the partners have expired during the pendency of the proceedings. Thus, the charge was levelled against the surviving partner. It has been found that he was not managing the affairs of the firm. Thus, he has been acquitted. The primary charge against Desh Raj was that he had wilfully omitted or causefully omitted the entry in the books of account and the return was false to his knowledge. Even if a strict view is taken, no charge was proved against him. Still further, it is the admitted position that the complaint was filed on 31-3-1986, the trial had continued for a long period of more than 13 years till 13-12-1999.

Taking the totality of the circumstances of the case, we find no ground to grant of leave to appeal. Dismissed.

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