2018R00725 (JSP/KDS)

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WILLIAM T. WALSH, CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon.
	:	
v.	:	Criminal No. 18- CR. 613 (BRM)
	:	
RAO DESU	:	18 U.S.C. § 371
	:	26 U.S.C. § 7206(2)

INDICTMENT

The Grand Jury in and for the District of New Jersey, sitting at Newark, charges:

COUNT 1
(Conspiracy to Impede and Impair the Functions of the IRS – 18 U.S.C. § 371)
(Heights Pharmacy)

1. At all times relevant to Count 1 of this Indictment:

a. Defendant RAO DESU, a resident of Warren, New Jersey, had an ownership interest in and operated multiple pharmacies located in New Jersey, New York and Maryland, to include: (i) DVS Pharma, Inc. d/b/a Heights Pharmacy ("Heights Pharmacy"), a retail pharmacy located in Piscataway, New Jersey; and (ii) Manvihar Pharmacy d/b/a Arthur Avenue Pharmacy ("Arthur Avenue Pharmacy"), a retail pharmacy located in the Bronx, New York (these pharmacies are collectively referred to as the "Pharmacies").

b. The Internal Revenue Service ("IRS") was an agency of the United States Department of the Treasury responsible for administering federal tax laws, including the ascertainment, computation, assessment and collection of taxes, including income taxes.

c. Each of the Pharmacies operated as an "S Corporation" under Subchapter S of the Internal Revenue Code. As S Corporations, the Pharmacies were required to make and file annual U.S. Income Tax Returns for S Corporations ("IRS Form 1120S"), reporting, among other items, their net business income. An S Corporation's net business income as reported on

IRS Form 1120S was determined by subtracting its total deductions from its total income. An S Corporation did not incur any tax liability for any net business income it earned during a given tax year. Instead, an owner of an S Corporation was required to report such net business income on his or her Individual Income Tax Return ("IRS Form 1040") each tax year. Accordingly, net business income obtained by the Pharmacies in a given tax year was required to be reported by RAO DESU on his IRS Form 1040 for that year.

d. Accounting Firm 1, an accounting and tax preparation business located in Cranbury, New Jersey, maintained the general ledger and prepared the IRS Forms 1120S for Heights Pharmacy for the tax years 2004, 2012, 2013, and 2014. Accounting Firm 1 also maintained the general ledger and prepared the IRS Forms 1120S for Arthur Avenue Pharmacy for the tax years between in or about 2004 and in or about 2012. Additionally, Accounting Firm 1 prepared IRS Forms 1040 for RAO DESU and his relative (the "Relative") between in or about 2004 and in or about 2014.

e. Accounting Firm 2, an accounting and tax preparation business located in Lyndhurst, New Jersey, maintained the general ledger and prepared the IRS Forms 1120S for Heights Pharmacy for the tax years between in or about 2005 and in or about 2011. Accounting Firm 1 and Accounting Firm 2 are collectively referred to as the "Tax Preparation Companies."

<u>Background</u>

2. In or about 2003, RAO DESU and RAO DESU's former business partner ("Individual 1") met with Darshna Desai ("D. Desai") to discuss D. Desai's potential purchase of Individual 1's shares of Heights Pharmacy. During these discussions, RAO DESU and Individual 1 discussed the value of Heights Pharmacy and negotiated the terms for D. Desai's purchase of Individual 1's 50% ownership in Heights Pharmacy. RAO DESU and Individual 1 explained to D. Desai that the majority of the cash earnings of Heights Pharmacy were

unreported and shared between RAO DESU and Individual 1, and that Individual 1, as lead pharmacist, received a portion of his salary in cash "under-the-table," meaning that it was not reported to the IRS. RAO DESU and Individual 1 further explained that the same arrangement, *i.e.*, sharing unreported cash earnings with RAO DESU and the under-the-table cash payments to the lead pharmacist, would continue after D. Desai purchased Individual 1's ownership interest.

3. In or about April 2004, knowing of the cash-skimming scheme that RAO DESU and Individual 1 had been operating, D. Desai purchased Individual 1's shares of Heights Pharmacy and began working as the lead pharmacist. In or about June 2012, RAO DESU purchased D. Desai's interest in Heights Pharmacy. D. Desai continued working as the lead pharmacist of Heights Pharmacy until she resigned in or about February 2013.

4. The Relative assisted at times in the operation of several of RAO DESU's businesses, including Heights Pharmacy.

5. Heights Pharmacy maintained three cash registers – two registers for pharmacy sales (the "Pharmacy Registers") and one register for lottery sales (the "Lottery Register"). Sales from the Lottery Register were deposited directly into a separate bank account for lottery proceeds.

<u>The Conspiracy</u>

6. From at least in or about April 2004 through in or about November 2013, in the District of New Jersey, and elsewhere, defendant

RAO DESU

did knowingly and willfully combine, conspire, confederate and agree with others, including D. Desai, to defraud the IRS by impeding, impairing, obstructing, and defeating the lawful government functions of the IRS to ascertain, compute, assess, and collect income taxes.

Object of the Conspiracy

7. It was the object of the conspiracy that RAO DESU, and the other coconspirators, would subvert the functions of the IRS to ascertain, compute, assess, and collect income taxes due and owing from RAO DESU and the coconspirators, through, among other things, the skimming of cash and the substantial understatement of income obtained from the operation of Heights Pharmacy.

Manners and Means

8. Among the manners and means that RAO DESU and the other coconspirators used to carry out the conspiracy and to effect its unlawful object were the following:

Cash Skimming Conduct

a. Between in or about April 2004 and in or about August 2004, Individual 1 along with the Relative, taught D. Desai how to handle the day-to-day operations of Heights Pharmacy. Individual 1 trained D. Desai in, among other things, the Heights Pharmacy computer system and how to manage the pharmacy's inventory. The Relative trained D. Desai on systems such as banking and accounts payable.

b. In or about August 2004, the Relative trained D. Desai how to conceal cash from the Pharmacy Registers. The Relative taught D. Desai to collect all of the cash that came into the Pharmacy Registers, and to deposit only a small portion of that cash into the Heights Pharmacy bank account. The Relative instructed D. Desai to deposit into the Heights Pharmacy bank account only that amount of cash that was not a round $100 or $50 increment and to set aside the remaining cash. For example, if $656 in cash was collected from the Pharmacy Cash Registers, only $6 in cash would be deposited, and the remaining $650 in cash would be set aside. From in or about June 2004 to in or about June 2012, D. Desai collected, and caused to be collected, all of the cash, checks, and money orders that came into the Pharmacy

Registers and deposited, or caused to be deposited, all of the checks and money orders from the Pharmacy Registers into the Heights Pharmacy bank account, but did not deposit all of the cash that came into the Pharmacy Registers. Credit card payments made by Heights Pharmacy customers were transferred directly into the Heights Pharmacy bank account. The amount of cash not deposited into the Heights Pharmacy bank account shall be referred to as the "Heights Pharmacy Skimmed Cash."

c. As part of the plan to conceal the true income of Heights Pharmacy, RAO DESU and D. Desai used a portion of the Heights Pharmacy Skimmed Cash to: (i) pay certain employees, including D. Desai, a portion of their respective salaries in cash; and (ii) pay D. Desai the monetary value of her unused vacation time.

d. Any Heights Pharmacy Skimmed Cash that was not distributed as set forth in paragraph 8(c) was split equally between RAO DESU (and the Relative) and D. Desai. RAO DESU and D. Desai typically split the majority of the Heights Pharmacy Skimmed Cash on a monthly basis. On a few occasions, however, a large share of the Pharmacy Register cash earnings was deposited into the Heights Pharmacy bank account to cover certain expenses. In those instances, the cash split was less substantial.

e. The cash earmarked for RAO DESU and the Relative generally was bundled with a rubber band and a slip of paper that noted the amount of cash in the bundle by D. Desai. RAO DESU or the Relative typically accepted the bundled cash and slip of paper in a bag at their home in Warren, New Jersey.

f. RAO DESU and D. Desai intentionally failed to report the Heights Pharmacy Skimmed Cash to the Tax Preparation Companies. The Tax Preparation Companies were, therefore, unaware of the existence of all of the cash obtained by Heights Pharmacy and did not report and account for all of the cash as income on the IRS Forms 1120S for Heights

Pharmacy, nor on the IRS Forms 1040, filed jointly for: (i) RAO DESU and the Relative and (ii) D. Desai and her relative.

g. The coconspirators took steps to conceal that cash skim on formal banking and accounting records. To keep an informal record among the coconspirators of the Heights Pharmacy Skimmed Cash, however, the Relative instructed D. Desai to use a coding system on the retained copy of the bank deposit slips to reflect the amount of skimmed cash. The coding system consisted of a handwritten number on the side of the bank deposit slips reflecting the amount of cash that was not deposited into the account. Specifically, each $100 in cash that was not deposited into the account was represented by a "1." and each $10 increment in cash that was not deposited into the account was represented by a ".1" For instance, if $650 was skimmed, the Relative instructed D. Desai to write "6.5" (representing $650) on the side of the retained copy of the bank deposit slip.

h. Additionally, D. Desai maintained a notebook that reflected the amount of cash that both RAO DESU (and the Relative) and D. Desai obtained from the cash skim between in or about June 2004 and in or about June 2012. Between in or about June 2004 and in or about November 2008, RAO DESU or the Relative initialed the notebook in handwritten charts that detailed the date, cash amount and initials of the person who received the skimmed cash. Beginning in or about December 2008, RAO DESU and the Relative no longer initialed the notebook; however, D. Desai continued to maintain the charts in the notebook to track the amount of cash that RAO DESU and the Relative received on a monthly basis until in or about June 2012.

i. The notebook also reflected the subtraction of payments that Heights Pharmacy made on certain of RAO DESU's personal loans. For instance, in or about October 2009, D. Desai received $10,230 from the Heights Pharmacy Skimmed Cash. The notebook reflected that RAO DESU also received $10,230 from the Heights Pharmacy Skimmed Cash; however, $3,035 of the skimmed cash was used to pay back RAO DESU's personal loan from the Heights Pharmacy bank account, and the remaining $7,195 in cash was physically handed to RAO DESU or the Relative. The notebook entries reflected that, in certain months, D. Desai received more of the Heights Pharmacy Skimmed Cash to account for the monetary value of her unused vacation, as described in paragraph 8(c) above.

False Entries Reflected on Tax Returns for Heights Pharmacy

j. Between in or about 2005 and in or about 2011, RAO DESU and D. Desai reviewed accounting reports generated by Accounting Firm 2 in preparation for yearly tax filings, and discussed ways to reduce their overall tax liability. In consultation and agreement with RAO DESU, D. Desai instructed Accounting Firm 2 to, among other things, include fictitious and undocumented expenditures in the business ledger, thereby reducing Heights Pharmacy's taxable income. The below chart sets forth the approximate amounts of some of the fictitious expenditures in the general ledger:

Date	Fictitious and Undocumented Expenditures
12/31/2008	$25,000
12/31/2009	$13,500
12/31/2009	$101,236
12/31/2010	$22,500
12/31/2011	$78,412

Filing Materially False Tax Returns

k. While in New Jersey, RAO DESU approved and caused to be filed with the IRS:

i. IRS Forms 1120S for Heights Pharmacy for tax years 2004 through 2012 that were prepared by the Tax Preparation Companies and were materially false and fraudulent, in that those tax returns: (A) failed to disclose a substantial portion of the cash income earned by Heights Pharmacy, including the cash that was skimmed from Heights Pharmacy and shared between RAO DESU and D. Desai, in the total amount of approximately $1,942,688 and (B) reported fictitious expenditures.

ii. IRS Forms 1040 for RAO DESU and the Relative for tax years 2004 through 2012 that were prepared by Accounting Firm 1 and were materially false and fraudulent, in that, among other things, those tax returns failed to disclose RAO DESU's share of the Heights Pharmacy Cash Skim, and, in certain tax years, took advantage of the fictitious expenditures from the business accounting records of Heights Pharmacy to fraudulently lower the amount of income reported on those returns.

Overt Acts

9. In furtherance of the conspiracy and to effect its unlawful object, the following overt acts were committed in the District of New Jersey and elsewhere:

a. On or about the filing dates listed below, in New Jersey, RAO DESU caused to be filed materially false IRS Forms 1040 for himself and the Relative for the tax years noted below, knowing that the returns did not report the correct amount of income received by RAO DESU, each constituting a separate overt act:

No.	Year	Filing Date
i	2011	October 15, 2012
ii	2012	November 4, 2013

b. On or about October 13, 2013, in New Jersey, D. Desai caused to be filed with the IRS a materially false IRS Form 1040 for herself and her relative for the 2012 tax year, knowing that the return did not report the correct amount of income received by D. Desai.

c. On or about October 13, 2013, in New Jersey, RAO DESU caused to be filed with the IRS a materially false IRS Form 1120S for Heights Pharmacy for the 2012 tax year, knowing that the return did not report the correct amount of net business income received by Heights Pharmacy for that year.

In violation of Title 18, United States Code, Section 371.

COUNT 2

(Conspiracy to Impede and Impair the Functions of the IRS – 18 U.S.C. § 371)
(Arthur Avenue Pharmacy)

1. Paragraphs 1(a) to 1(d) of Count 1 are hereby incorporated and realleged as if fully set forth herein.

Background

2. Coconspirator 1 was a licensed pharmacist and a former school-mate of RAO DESU. In or about January 2003, RAO DESU and Coconspirator 1 purchased Arthur Avenue Pharmacy from its prior owner. At that time, RAO DESU and Coconspirator 1 each were 50% owners of Arthur Avenue Pharmacy and Coconspirator 1 began working on-site as the lead pharmacist of Arthur Avenue Pharmacy.

3. In or about June 2012, RAO DESU purchased Coconspirator 1's interest in Arthur Avenue Pharmacy, becoming the sole owner of the pharmacy.

The Conspiracy

4. From in or about June 2005 to in or about November 2013, in the District of New Jersey, and elsewhere, defendant

RAO DESU

did knowingly and willfully combine, conspire, confederate and agree with others, including Coconspirator 1, to defraud the IRS by impeding, impairing, obstructing, and defeating the lawful government functions of the IRS to ascertain, compute, assess, and collect income taxes.

Object of the Conspiracy

5. It was the object of the conspiracy that RAO DESU and the other coconspirators would subvert the functions of the IRS to ascertain, compute, assess, and collect income taxes due and owing from RAO DESU and the coconspirators, through, among other things, the

skimming of cash and the substantial understatement of income obtained from the operation of Arthur Avenue Pharmacy.

Manners and Means

6. Among the manners and means that RAO DESU and the other coconspirators used to carry out the conspiracy and to effect its unlawful object were the following:

Cash Skimming Conduct

a. In or about 2005, approximately one year after RAO DESU and Coconspirator 1 purchased Arthur Avenue Pharmacy, RAO DESU and Coconspirator 1 agreed that they would no longer deposit the pharmacy's cash earnings into Arthur Avenue Pharmacy's bank account, and that they would instead split the cash evenly between the two of them. These cash earnings included cash sales generated by the pharmacy business and by a separate phone card business that was run out of the pharmacy. RAO DESU and Coconspirator 1 agreed that with the exception of $150 in cash, which was to remain in the cash register for the next day's operating expenses, all other cash would be set aside and not deposited into the pharmacy's bank account. RAO DESU further instructed Coconspirator 1 to retain the daily cash register tapes, which kept track of the pharmacy's gross receipts with a breakdown of sales by check, cash, and credit card.

b. Based on this agreement with RAO DESU, Coconspirator 1 caused an employee of Arthur Avenue Pharmacy, who handled the pharmacy's nightly closing, to set aside the pharmacy's cash from its check and credit card earnings. The employee was further instructed to place the cash, the checks, credit card payments, and cash register tapes in a box for future review.

c. On at least a weekly basis, either Coconspirator 1 or the employee, at Coconspirator 1's direction, prepared deposit slips for the deposit of the checks into the bank account. The deposit slips typically did not include any of the cash earnings. The amount of cash not deposited into the Arthur Avenue Pharmacy bank account shall be referred to as the "Arthur Avenue Skimmed Cash."

d. RAO DESU and Coconspirator 1 initially agreed to keep the Arthur Avenue Skimmed Cash at Arthur Avenue Pharmacy. In these early months of the conspiracy, RAO DESU counted the skimmed cash, compared it against the cash register tapes, and then divided the cash evenly between RAO DESU and Coconspirator 1. In separating the cash, RAO DESU wrote down cash totals for both the pharmacy and phone card sales on a slip of paper that he placed with his portion of the cash. RAO DESU wrote the letter "R" next to a dollar amount identifying the total cash skimmed from the pharmacy, and RAO DESU wrote the letter "P" next to a dollar amount identifying the total cash sales from the phone cards.

e. Several months later, RAO DESU and Coconspirator 1 agreed that, for safety reasons, Coconspirator 1 should keep the Arthur Avenue Pharmacy Skimmed Cash at his home until RAO DESU could come to the pharmacy and reconcile the amount of skimmed cash with the cash register tapes. Per their agreement, Coconspirator 1 counted the cash and divided it in half. Coconspirator 1, following RAO DESU's recording method, wrote the cash totals for both the pharmacy cash skim and phone card sales on a slip of paper attached to RAO DESU's portion of the cash.

f. RAO DESU would give advance notice to Coconspirator 1 when he planned to visit Arthur Avenue Pharmacy and would tell Coconspirator 1 to bring RAO DESU's portion of the cash to the pharmacy. RAO DESU would then reconcile the amount of the Arthur Avenue Skimmed Cash against the cash register receipts and take his portion of the cash.

g. According to Coconspirator 1, cash was deposited into the Arthur Avenue Pharmacy bank account, and the cash skimming temporarily paused between in or about November 2010 and in or about March 2012 in order to pay outstanding bills. Bank records for Arthur Avenue Pharmacy, however, reveal that no cash was deposited during this time period.

h. RAO DESU and Coconspirator 1 did not report the Arthur Avenue Skimmed Cash to Accounting Firm 1. Accounting Firm 1 was, therefore, unaware of the existence of all of the cash, and did not report and account for all of the cash in the books and records of Arthur Avenue Pharmacy and on Arthur Avenue Pharmacy's IRS Forms 1120S, nor on RAO DESU's IRS Forms 1040.

i. RAO DESU and Coconspirator 1 approved, and caused to be filed with the IRS, IRS Forms 1120S for Arthur Avenue Pharmacy for tax years 2005 through 2010 and 2012 that were materially false and fraudulent, in that those tax returns intentionally failed to disclose the cash income earned by Arthur Avenue Pharmacy, including the cash that was skimmed from Arthur Avenue Pharmacy and shared between RAO DESU and Coconspirator 1, in the total amount of approximately $800,000.

j. RAO DESU approved and caused to be filed with the IRS, IRS Forms 1040 for himself and the Relative for tax years 2005 through 2010 and 2012 that were materially false and fraudulent, in that, among other things, those tax returns failed to disclose RAO DESU's share of the cash received from Arthur Avenue Pharmacy.

k. Coconspirator 1 approved and caused to be filed with the IRS, IRS Forms 1040 for Coconspirator 1 and Coconspirator 1's relative for tax years 2005 through 2010 and 2012 that were false and fraudulent, in that, among other things, those tax returns failed to disclose Coconspirator 1's share of the cash received from Arthur Avenue Pharmacy.

<u>Overt Acts</u>

7. In furtherance of the conspiracy and to effect its unlawful object, the following overt acts were committed in the District of New Jersey and elsewhere:

a. On or about September 6, 2013, in New Jersey, RAO DESU and Coconspirator 1 caused to be filed with the IRS a materially false IRS Form 1120S for Arthur Avenue Pharmacy for the 2012 tax year, knowing that the return did not report the correct amount of net business income received by Arthur Avenue Pharmacy for that year.

b. On or about September 11, 2013, in New Jersey, Coconspirator 1 caused to be filed with the IRS a materially false IRS Form 1040 for Coconspirator 1 and Coconspirator 1's relative for the 2012 tax year, knowing that the return did not report the correct amount of income received by Coconspirator 1.

c. On or about November 4, 2013, in New Jersey, RAO DESU caused to be filed with the IRS a materially false IRS Form 1040 for RAO DESU and the Relative for the 2012 tax year, knowing that the returns did not report the correct amount of income received by RAO DESU.

In violation of Title 18, United States Code, Section 371.

COUNTS 3 to 6
(Aiding and Assisting in Subscribing to False Tax Returns – 26 U.S.C. § 7206(2))

1. Paragraphs 1 to 5 and 8 of Count 1 and paragraphs 2, 3 and 6 of Count 2 of this Indictment are hereby incorporated and realleged as if fully set forth herein:

2. From at least in or about January 2011 through in or about December 2012, RAO DESU directly and indirectly took cash from the Pharmacies' gross receipts through the cash-skimming schemes set forth in Counts 1 and 2 of this Indictment. The approximate amount of cash that RAO DESU obtained from these schemes in 2011 and 2012 is set forth below:

Approximate Amounts of Cash Skimmed From The Pharmacies and Obtained by RAO DESU			
Tax Year	**Cash Skimmed from Heights Pharmacy**	**Cash Skimmed from Arthur Avenue Pharmacy**	**Total**
2011	$86,397	$0	$86,397
2012	$18,215	$8,000	$26,215
Total	$104,612	$8,000	$112,612

3. For the tax years 2011 and 2012, RAO DESU intentionally withheld from the Tax Preparation Companies information regarding the skimmed cash from the Pharmacies, thereby causing the IRS Forms 1120S and IRS Forms 1040 that RAO DESU caused to be filed with the IRS to understate the net business income of the Pharmacies and the total amount of income that defendant RAO DESU received in those years, respectively. In 2013, once RAO DESU knew of the investigation into the above-described cash skimming scheme at Heights Pharmacy, RAO DESU reported to Accounting Firm 1, for the first time, that he received approximately $30,000 in cash from Heights Pharmacy, but he failed to report the entire amount of the cash skim at Heights Pharmacy and he did not report any of the cash skimmed from Arthur Avenue Pharmacy.

4. Between in or about January 2011 and in or about November 2013, RAO DESU intentionally:

a. authorized the preparation of IRS Forms 1120S and other books and records that failed to include the cash skimmed from the Pharmacies as set forth above, thereby fraudulently reducing the net business income for the Pharmacies.

b. did not accurately report the cash income that RAO DESU obtained during this period, as set forth in paragraphs 2 and 3, when causing to be filed with the IRS his IRS Forms 1040 for tax years 2011 and 2012.

5. On or about the filing dates listed below, in the District of New Jersey, and elsewhere, defendant

RAO DESU

did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the IRS of IRS Forms 1040 and 1120S, described below, that were false and fraudulent as to material matters, in that they falsely and fraudulently failed to report certain income, specifically, the cash income skimmed from Heights Pharmacy and Arthur Avenue Pharmacy, as follows:

Count	Tax Year	IRS Form	Filing Date	Unreported Material Matter
3	2011	RAO DESU's 1040	October 15, 2012	$86,397 unreported income
4	2012	RAO DESU's 1040	November 4, 2013	$26,215 unreported income
5	2012	Arthur Avenue - 1120S	September 6, 2013	$16,000 unreported cash skim from Arthur Avenue Pharmacy
6	2012	Heights Pharmacy - 1120S	October 15, 2013	$36,535 unreported cash skim from Heights Pharmacy

In violation of Title 26, United States Code, Section 7206(2).

A TRUE BILL

FOREPERSON

Craig Carpenito
CRAIG CARPENITO
UNITED STATES ATTORNEY

CASE NUMBER: 18-CR-613 (BRM)

United States District Court
District of New Jersey

UNITED STATES OF AMERICA

v.

RAO DESU

INDICTMENT FOR

18 U.S.C. § 371
26 U.S.C. § 7206(2)

A True Bill,

Foreperson

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