

CR11 00846

EJD

2011 RO 2414

HRL

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

2011 NOV 17 11 A 9:43

SAN JOSE DIVISION

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CA. - SAN JOSE

THE UNITED STATES OF AMERICA

vs.

ASHVIN DESAI

INDICTMENT

COUNTS ONE - THREE:

26 U.S.C. § 7201 - Attempt to Evade or Defeat Tax

COUNTS FOUR and FIVE:

26 U.S.C. § 7206(2) - Aiding in Preparation of a False Tax Return

COUNTS SIX - EIGHT:

31 U.S.C. §§ 5314 & 5322 - Failure to File Report of Foreign Bank and Financial Accounts

A true bill.

Mary Elizabeth Sladek
Foreperson

Filed in open court this 16 day of Nov.

A.D. 2011

[Signature]
United States Magistrate Judge

Bail. \$ Summons for Dec 8, 2011 at 9:30 AM

1 MELINDA HAAG (CABN 132612)
2 United States Attorney

FILED

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CA. SAN JOSE

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

EJD

10 SAN JOSE DIVISION

11 UNITED STATES OF AMERICA,

CR11 00846 HRL

12 Plaintiff,

13 v.

14 ASHVIN DESAI,

15 Defendant.

VIOLATIONS: 26 U.S.C. § 7201 - Attempt
to Evade or Defeat Tax; 26 U.S.C. § 7206(2)
- Aiding in Preparation of a False Tax
Return; 31 U.S.C. §§ 5314 & 5322 - Failure
to File Report of Foreign Bank and Financial
Accounts

SAN JOSE VENUE

17 INDICTMENT

18 The Grand Jury charges:

19 Introduction

20 At all times relevant to this Indictment, unless otherwise indicated:

21 1. ASHVIN DESAI, the defendant, was a United States citizen residing in San Jose,
22 California, and was the 100% shareholder of Prosurg, Inc., a medical device company that
23 developed and marketed medical products used to treat urological and gynecological disorders.

24 2. United States citizens had an obligation to report to the IRS on the Schedule B of
25 a U.S. Individual Income Tax Return, Form 1040, whether that individual had an interest in, or
26 signature authority over, a financial account in a foreign country in a particular year by checking
27 "Yes" or "No" in the appropriate box and identifying the country where the account was
28 maintained. United States citizens had an obligation to report all income earned from foreign

INDICTMENT

1 financial accounts on the tax return and to pay the taxes due on that income.

2 3. United States citizens who had an interest in, or signature authority over, one or
 3 more financial accounts in a foreign country with an aggregate value of more than \$10,000 at any
 4 time during a particular year were required to file with the Department of the Treasury a Report
 5 of Foreign Bank and Financial Accounts, Form TD F 90-22.1 (the "FBAR"). An FBAR
 6 identified, among other things, the name of the financial institution at which the account was
 7 held, the account number, and the maximum value of the account during the calendar year. The
 8 FBAR for the applicable year was due by June 30 of the following year.

9 4. The Hongkong and Shanghai Banking Corporation Limited was one of the largest
 10 international banks in the world and was headquartered in London, England. It maintained over
 11 9,800 offices in 77 countries and territories throughout the world, including in India ("HSBC
 12 India"), England ("HSBC England"), and Dubai ("HSBC Dubai").

13 5. During calendar years 2007 through 2009, DESAI had an interest in, and signature
 14 or other authority over, bank accounts at HSBC India and HSBC England.

15 6. For calendar years 2007 through 2009, DESAI filed individual income tax returns
 16 with the Internal Revenue Service, on which he failed to report interest income earned in his
 17 HSBC India accounts in the following approximate amounts:

Year	Interest Income
2007	\$471,324
2008	\$378,101
2009	\$457,385

18
 19
 20
 21
 22 COUNT ONE: (26 U.S.C. § 7201 - Attempt to Evade or Defeat Tax)

23 7. The allegations of paragraphs 1 through 6 are restated as if fully alleged herein.

24 8. On or about April 12, 2008, in the Northern District of California, the defendant,
 25 ASHVIN DESAI,

26 who during the calendar year 2007 was married, did willfully attempt to evade and defeat a large
 27 part of the income tax due and owing by him and his spouse to the United States of America for
 28 the calendar year 2007, by preparing and causing to be prepared, and by signing and causing to

1 be signed, a false and fraudulent joint U.S. Individual Income Tax Return, Form 1040, on behalf
2 of himself and his wife, which was filed with the Internal Revenue Service. In that false income
3 tax return, it was stated that their joint taxable income for the calendar year was \$58,687.29 and
4 that the amount of tax due and owing thereon was \$7,902.26, and that he did not have an interest
5 in, and signature or other authority over, over bank accounts located in a foreign country. In fact,
6 as DESAI then and there knew, their joint taxable income for the calendar year was in excess of
7 the amount stated on the return, and, upon the additional taxable income an additional tax was
8 due and owing to the United States of America, and he had an interest in, and signature or other
9 authority over, bank accounts located in India during calendar year 2007.

10 All in violation of Title 26, United States Code, Section 7201.

11 COUNT TWO: (26 U.S.C. § 7201 - Attempt to Evade or Defeat Tax)

12 9. The allegations of paragraphs 1 through 6 are restated as if fully alleged herein.

13 10. On or about April 15, 2009, in the Northern District of California, the defendant,

14 ASHVIN DESAI,

15 who during the calendar year 2008 was married, did willfully attempt to evade and defeat a large
16 part of the income tax due and owing by him and his spouse to the United States of America for
17 the calendar year 2008, by preparing and causing to be prepared, and by signing and causing to
18 be signed, a false and fraudulent joint U.S. Individual Income Tax Return, Form 1040, on behalf
19 of himself and his wife, which was filed with the Internal Revenue Service. In that false income
20 tax return, it was stated that their joint taxable income for the calendar year 2008 was \$69,917.84
21 and that the amount of tax due and owing thereon was \$6,156.88. In fact, as DESAI then and
22 there knew, their joint taxable income for the calendar year was in excess of the amount stated on
23 the return, and, upon the additional taxable income an additional tax was due and owing to the
24 United States of America, and he had an interest in, and signature or other authority over, bank
25 accounts located in India during calendar year 2008.

26 All in violation of Title 26, United States Code, Section 7201.

27 COUNT THREE: (26 U.S.C. § 7201 - Attempt to Evade or Defeat Tax)

28 11. The allegations of paragraph 1 through 6 are restated as if fully alleged herein.

1 ASHVIN DESAI,

2 did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation
3 to the Internal Revenue Service, of a U.S. Individual Income Tax Return, Form 1040, of N.D. for
4 the calendar year 2009, which was false and fraudulent as to material matters, in that the return
5 (a) failed to report on Lines 8a and 22 interest income received by N.D. in one or more bank
6 accounts located in India, and (b) failed to report, on Schedule B, lines 7a and 7b, that N.D. had
7 an interest in, and signature or other authority over, bank accounts located in India, whereas, in
8 fact, and as DESAI well knew and believed, N.D. had received substantial interest income in one
9 or more bank accounts located in India, and N.D. had an interest in, and signature or other
10 authority over, one or more bank accounts located in India.

11 All in violation of Title 26, United States Code, Section 7206(2).

12 COUNT FIVE: (26 U.S.C. § 7206(2) - Aiding in Preparation of a False Tax Return)

13 20. The allegations of paragraphs 1 and 2 are restated as if fully alleged herein.

14 21. During calendar year 2009, DESAI's adult daughter, A.D., had an interest in,
15 and signature or other authority over, one or more bank accounts at HSBC India and HSBC
16 Dubai.

17 22. On or about April 18, 2007, \$433,774.10 was transferred from one of DESAI's
18 HSBC India bank accounts to a bank account maintained in the name of A.D. at HSBC India.

19 23. On or about February 28, 2008, DESAI deposited, or caused to be deposited,
20 \$250,000 into a bank account maintained in the name of A.D. at HSBC India.

21 24. On or about March 5, 2008, DESAI deposited, or caused to be deposited,
22 \$208,402.49 into a bank account maintained in the name of A.D. at HSBC India.

23 25. On or about February 11, 2009, DESAI closed his account at HSBC England and
24 directed that funds from that account be transferred to a bank account maintained in the name of
25 A.D. at HSBC Dubai.

26 26. During 2009, the bank account maintained in the name of A.D. at HSBC India
27 earned interest income of approximately \$76,000.

28 27. On or about April 5, 2010, in the Northern District of California, the defendant

ASHVIN DESAI,

did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the Internal Revenue Service, of a U.S. Individual Income Tax Return, Form 1040, of A.D. for the calendar year 2009, which was false and fraudulent as to material matters, in that the return (a) failed to report on Lines 8a and 22 interest income received by A.D. in one or more bank accounts located in India, and (b) failed to report, on Schedule B, lines 7a and 7b, that A.D. had an interest in, and signature or other authority over, bank accounts located in India and Dubai, whereas, in fact, and as DESAI well knew and believed, A.D. had received substantial interest income in one or more bank accounts located in India, and A.D. had an interest in, and signature or other authority over, one or more bank accounts located in India and Dubai.

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

COUNTS SIX THROUGH EIGHT: (31 U.S.C. §§ 5314 & 5322 - Failure to File Report of Foreign Bank and Financial Accounts)

30. The allegations of paragraphs 1 through 5 are restated as if fully alleged herein.

31. During calendar years 2007 through 2009, the approximate high balances in DESAI's HSBC India accounts were as follows:

Year	High Balance
2007	\$8,836,258
2008	\$7,526,896
2009	\$8,830,373

32. On or before the due dates listed below, in the Northern District of California, the defendant,

ASHVIN DESAI,

while violating another law of the United States, to wit, tax evasion, in violation of 26 U.S.C. § 7201, did unlawfully, willfully, and knowingly fail to file with the Commissioner of the Internal Revenue Service, U.S. Department of the Treasury, an FBAR disclosing that he had an interest in, and signature and other authority over, a bank, securities, and other financial account in a foreign country, to wit, at least one bank account located in India at HSBC India, which had an

1 aggregate value of more than \$10,000 at any time during the years listed below, each FBAR
 2 constituting a separate count of this indictment:

Count	Calendar Year	Due Date of FBAR
Six	2007	June 30, 2008
Seven	2008	June 30, 2009
Eight	2009	June 30, 2010

7 All in violation of Title 31, United States Code, Sections 5314 & 5322(a)-(b); and Title
 8 31 Code of Federal Regulations, Sections 1010.350, 1010.306(c)-(d) & 1010.840(b) (formerly
 9 Title 31 Code of Federal Regulations, Sections 103.24, 103.27(c)-(d) & 103.59(b)).

A True Bill

12 Dated: November 16, 2011

Mary Elizabeth Sladek
 FOREPERSON

14 MELINDA HAAG
 United States Attorney

16 J. Douglas Wilton for
 17 MIRANDA KANE
 Assistant United States Attorney
 Chief, Criminal Division

20 Approved as to Form

21 Melissa Siskind
 22 MELISSA S. SISKIND
 Trial Attorney
 23 U.S. Department of Justice
 Tax Division

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT
 SUPERSEDING

OFFENSE CHARGED

Counts One - Three: 26 U.S.C. § 7201 - Attempt to Evade or Defeat Tax Petty
Counts Four and Five: 26 U.S.C. § 7206(2) - Aiding in Preparation of a False Tax Return Minor
Counts Six - Eight: 31 U.S.C. §§ 5314 & 5322 - Failure to File Report of Foreign Bank and Financial Accounts Misdemeanor
 Felony
PENALTY: Counts 1-3: 5 years imprisonment, \$250,000 fine, 3 years supervised release, \$100 special assessment fee; Counts 4 and 5: 5 years imprisonment, \$250,000 fine, 1 year supervised release, \$100 special assessment fee; Counts 6-8: 10 years imprisonment, \$500,000 fine, 3 years supervised release, \$100 special assessment fee.

Name of District Court and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION 9:43

DEFENDANT - U.S.

ASHVIN DESAI

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CA. SAN JOSE

EJD

DISTRICT COURT NUMBER

CR 11 00846

HRL

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

IRS S/A Michael Helgesen

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

this is a reprosecution of charges previously dismissed which were dismissed on motion of:

U.S. ATTORNEY DEFENSE

SHOW DOCKET NO.

this prosecution relates to a pending case involving this same defendant

MAGISTRATE CASE NO.

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person

Furnishing Information on this form MELINDA HAAG

U.S. Attorney Other U.S. Agency

Name of Assistant U.S.

Attorney (if assigned) AUSA Tom Moore

DEFENDANT

IS NOT IN CUSTODY

Has not been arrested, pending outcome this proceeding.

- 1) If not detained give date any prior summons was served on above charges
- 2) Is a Fugitive
- 3) Is on Bail or Release from (show District)

IS IN CUSTODY

- 4) On this charge
- 5) On another conviction } Federal State
- 6) Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

Has detainer been filed? Yes No

If "Yes" give date filed

DATE OF ARREST Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY Month/Day/Year

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS NO PROCESS* WARRANT

Bail Amount: _____

If Summons, complete following:

Arraignment Initial Appearance

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Defendant Address:

4287 Littleworth Way
San Jose, CA 95135

Date/Time: 12/8/11 at 9:30am Before Judge: Grewal

Comments: