

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
DEVANAND SHARMA,) OTA NO. 19105356
)
 APPELLANT.)
)
)

TRANSCRIPT OF PROCEEDINGS

Cerritos, California

Tuesday, July 21, 2020

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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IN THE MATTER OF THE APPEAL OF,)
DEVANAND SHARMA,) OTA NO. 19105356
APPELLANT.)
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Transcript of Proceedings, taken at
12900 Park Plaza Dr., Suite 300, Cerritos,
California, 90703, commencing at 3:45 p.m.
and concluding at 4:20 p.m. on Tuesday,
July 21, 2020, reported by Ernalyn M. Alonzo,
Hearing Reporter, in and for the State of
California.

1 APPEARANCES:
2
3 Panel Lead: ALJ TERESA STANLEY
4
5 Panel Members: ALJ NGUYEN DANG
6 ALJ ANDREW WONG
7
8 For the Appellant: D. SHARMA
9
10 For the Respondent: STATE OF CALIFORNIA
11 DEPARTMENT OF TAX AND
12 FEE ADMINISTRATION
13 By: RANDOLPH SUAZO
14 JASON PARKER
15 KEVIN SMITH
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I N D E X

E X H I B I T S

(No Appellant Exhibits were produced.)
(Department's Exhibits were received at page 6.)

P R E S E N T A T I O N

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By Mr. Suazo	12

1 Cerritos, California; Tuesday, July 21, 2020

2 3:45 p.m.

3

4 JUDGE STANLEY: Let's go on the record.

5 And this is the appeal of Devanand Sharma,
6 Case Number 19105356. The date is July 21st, and the time
7 is now 3:45 p.m. The location -- the hearing was
8 scheduled for Cerritos, California, initially, but it is
9 being conducted electronically from several different
10 locations.

11 The judges for this matter are myself,
12 Judge Teresa Stanley, Judge Andrew Wong, and
13 Judge Daniel Cho [sic].

14 Please identify yourselves for the record, and
15 I'm going to start with you, Mr. Sharma.

16 MR. SHARMA: Devanand Sharma.

17 JUDGE STANLEY: And CDTFA.

18 MR. SUAZO: Randy Suazo, Hearing Representative.

19 MR. PARKER: This is Jason Parker, Hearing
20 Representative.

21 MR. SMITH: Kevin Smith from the legal department
22 of CDTFA.

23 JUDGE STANLEY: Thank you.

24 And if you heard that feedback -- this is
25 Judge Stanley again. If you heard that feedback, you'll

1 realize that I made the mistake of not muting my
2 microphone while other people were talking, and it causes
3 that feedback. So I apologize for that. And it's a good
4 reminder for all of us to do that.

5 JUDGE STANLEY: Okay. We're admitting into
6 the -- going to admit exhibits into the record at this
7 time. CDTFA's Exhibits A through E will be admitted into
8 evidence without objection.

9 (Department's Exhibits A-E were received in
10 evidence by the Administrative Law Judge.)

11 Appellant has not presented any exhibits to be
12 admitted. The issues -- okay. Hang on one second.

13 I have been introducing the wrong judge. Daniel
14 Cho did not replace one of the panel judges. In fact, it
15 was Judge Dang who replaced one of the other panel members
16 that was noticed. And I apologize for that, Judge Dang.
17 But he is the one who is on this with -- so it's myself,
18 Teresa Stanley, Judge Wong, and Judge Dang.

19 So back to restating the issues. Issue one is
20 whether appellant has shown that he's entitled to a
21 reduction in the unreported taxable sales for the
22 January 1st, 2011 through December 31st, 2015, audit
23 period; and the second, is whether appellant has shown
24 that he's entitled to an increase in the unreported cost
25 of self-consumed taxable merchandise.

1 Is that correct, Mr. Sharma?

2 MR. SHARMA: Sharma. Yes.

3 JUDGE STANLEY: And Mr. Suazo?

4 MR. SUAZO: Yes.

5 JUDGE STANLEY: Okay. And I did indicate, and we

6 discussed at the prehearing conference that pursuant to

7 CDTFA's decision in this matter, they have agreed to

8 delete the negligence penalties.

9 Is that correct, Mr. Suazo?

10 MR. SUAZO: That's correct, Your Honor.

11 JUDGE STANLEY: Okay. Moving on. Because

12 there's only one witness today, we're going to dispense

13 with opening statements and move directly to testimony.

14 Mr. Sharma, I cannot see you, but I'm going to

15 ask you to raise your right hand and --

16 MR. SHARMA: Okay.

17 JUDGE STANLEY: Have you done so?

18 MR. SHARMA: Yes, I have.

19 JUDGE STANLEY: Thank you.

20

21 DEVANAND SHARMA,

22 produced as a witness, and having been first duly sworn by

23 the Administrative Law Judge, was examined and testified

24 as follows:

25 ///

1 JUDGE STANLEY: Okay. I have given you
2 15 minutes, which you said was more than you need, but
3 take the time if you'd like. And you can proceed with
4 presenting your case to the panel.

5 MR. SHARMA: Okay. Shall I proceed?

6 JUDGE STANLEY: Yes, please.

7

8 PRESENTATION

9 MR. SHARMA: Okay. This is Sharma, Devanand
10 Sharma. And I believe and I tried to convey this to many
11 bodies of people that I spoke with, this has gone on for
12 many years. I have a restaurant within a hotel, and it
13 produces certain revenue. But it also does not produce
14 certain revenue because of -- we don't charge for it. And
15 so we filed our papers, and I don't know what was done
16 wrong, but it brought us to this place this day today.

17 We have filed our papers correctly since then,
18 whereby we declare whatever it is that we collected and
19 then file our quarterlies. Now, the amounts that have
20 been asked for over those years, the period that's in
21 question today, is many folds larger than what the reality
22 is or was, now looking back. And it was an error. An
23 error on my part, I suppose. In the end I must take
24 responsibility for all.

25 But whatever it was, there was something wrong.

1 I still to this day do not understand what was wrong. And
2 I'm going to leave it alone. I hope that it's corrected
3 to where it should be, and it should be in line with what
4 followed those days, which would be the current before the
5 Covid. Since then we've been closed and out of business,
6 basically. It's quite a few months.

7 But prior to that date, it's December of last
8 year and previous, we've been filing, and the year before,
9 and the year before, and the year before, and so on. It's
10 not as though we wake up in the morning to falsify things.
11 Somewhere there's a mistake, and I've expressed this in
12 this way. If there was money, I could hire law firm, but
13 our company is not that strong.

14 In any event that's it. In conclusion I thank
15 everyone for your time, and that's about all I can
16 explain. Thank you.

17 JUDGE STANLEY: Thank you, Mr. Sharma.

18 Mr. Suazo, does CDTFA have any questions for the
19 witness?

20 MR. SUAZO: No, Your Honor.

21 JUDGE STANLEY: Judge Wong, do you have any
22 questions?

23 JUDGE WONG: This is Judge Wong. I did have one
24 question. Appellant claims they gave away about
25 75 percent of his food; is that correct, Appellant?

1 MR. SHARMA: Food and beverage. We also give
2 them a refrigerator that's in their room. And they have
3 different drinks that they can have, and we don't charge
4 for that. Which is --

5 JUDGE WONG: This is Judge Wong.

6 MR. SHARMA: -- beer, wine, that sort of thing.
7 And then same with the bar. And usually your beverage
8 volume is greater than your food volume. In our case I
9 think it is. And -- but we would trying to be a copycat
10 of Embassy Suites. And we still are, though. We even got
11 challenged with threats of litigation by some companies,
12 but that's all we're doing, and we're still doing it.

13 And we didn't collect the money. We didn't
14 charge people. And the way that the agency that we are
15 talking to now determined what we should have been paying
16 is based upon -- because we only buy from Sysco Foods,
17 U.S. Foods, Young's Market. We cannot go to a liquor
18 store and buy something, and it's all recorded. So we did
19 everything honestly of what we did.

20 But we were not collecting the tax on it because
21 that was not our purpose for the purchase. Then we give
22 away water in the rooms, and we don't collect anything for
23 it. It's sort of a package of -- of your stay.

24 JUDGE WONG: This is Judge Wong. So how does
25 your business make money? Do you have a relationship with

1 the hotel, or do you have an ownership interest in the
2 hotel?

3 MR. SHARMA: No. The hotel would give me free
4 rent there and also promote my restaurant. Some people
5 come and eat and drink on their own. Also people pay.
6 But the percentage was lower than the total that we sold,
7 and it worked out okay for years -- for 50 years now.
8 We've been together, same hotel and same restaurant and
9 bars. There's more than one bar there outside and the
10 Tiki bar, and there's another bar called Room 66 Bar.
11 Then you have the lounge bar which inside adjacent to the
12 restaurant.

13 But we've just done this for 50 years now. We
14 started out in our 20s, and I'm in my 70s now. But that's
15 all we've been doing, nothing different. And we've been
16 successful enough to pay our bills and the hotel, I'm
17 sure. I don't run their affairs, but the restaurant has
18 been able to. Normally, a restaurant like that cost you
19 maybe \$10,000 a month to lease it, and they waived that
20 for us and made it easy. It just works for us. I don't
21 know if it's easy, but it works for us all these years.

22 Here we got caught up in this period of time that
23 we're speaking up, and I don't have the answers. All I
24 can say is, you know, we didn't do anything wrong except
25 the figures are wrong based upon determining that whatever

1 we bought from the food purveyors is times so much, and
2 this is how much your gross revenue should be. Not in
3 every case.

4 We say ours is unusual in that sense. And for
5 that reason, we didn't pay our tax, and that's why the
6 government is after us. But we didn't do anything
7 malicious or anything different than we did before or
8 since.

9 JUDGE WONG: This is Judge Wong. I have no
10 further questions at this time. Thank you.

11 MR. SHARMA: Thank you, sir.

12 JUDGE STANLEY: Thank you, Judge Wong.

13 Judge Dang do you have any questions?

14 JUDGE DANG: This is Judge Dang. I don't have
15 any questions. Thank you.

16 JUDGE STANLEY: Okay. If there are no questions,
17 then we'll turn it over to CDTF to do their presentation.

18

19 PRESENTATION

20 MR. SUAZO: Hi. This Randy Suazo. The Appellant
21 is a sole proprietorship and operates the American Bar and
22 Grill, which is a bar and restaurant adjacent to the
23 Tradewinds Hotel in Inglewood. The sellers permit start
24 date is October 12, 2011. The Appellant also runs a
25 second bar by the hotel pool. It is reported under the

1 same seller's permit.

2 The Appellant is a 50 percent owner of L.A.
3 Adventurers All Suite Hotel, LLC, which operates the hotel
4 and other rental properties. The Appellant leases a
5 restaurant space from the LLC. The restaurant is a
6 dine-in facility serving American-style food with a full
7 service bar. The restaurant is open from 7:00 a.m. to
8 11:00 a.m. and again from 6:30 p.m. to 10:00 p.m. The
9 pool location is open from 11:00 a.m. to 4:00 p.m.

10 The Department performed an audit for the period
11 from January 1st, 2013 to December 31st, 2015. The
12 Appellant's reported sales range between \$1,000 to \$2,200
13 per quarter. The 12 quarter average was just \$1,333 in
14 sales per quarter or on \$15 a day. Federal income tax
15 returns, profit and loss statements, general subsidiary
16 letters were not provided. The purchase invoices were
17 also not provided. POS system summary reports were
18 provided after the initial audit was processed.

19 However, the detail to the reports was never
20 provided. Only the Appellant's primary banking account
21 bank statements were provided after the initial audit was
22 concluded. The Appellant has 12 bank accounts. Due to
23 the lack of records, the Department surveyed commonly
24 known beer and liquor suppliers to establish purchases for
25 bar sales. The Department also surveyed two restaurant

1 vendors to establish food purchases for the restaurant
2 sales.

3 It should be noted that other major vendors such
4 as Coca Cola, Pepsi, Gallo Wines, et cetera, were not
5 surveyed and, thus, not included in the audited purchase
6 amount for either the bar or restaurant. The information
7 obtained from the vendors was summarized and segregated
8 between bar restaurant purchases. A 20 percent reduction
9 in purchases was made as the Appellant claimed that they
10 gave away both food and alcohol to guests of the hotel.

11 Reductions of 2 percent each were also made for
12 self-consumption and pilferage. Since no detailed
13 invoices were provided, a shelf test could not be
14 performed. A 400 percent industry average mark-up for
15 beer and alcohol and a 200 percent industry mark-up for
16 food were used. The estimated mark-ups were based on the
17 Department's experience of auditing similar businesses
18 most considered reasonable for the Appellant's business
19 during the audit period; Exhibit D, page 37 and 38.

20 The adjusted food purchases were combined with
21 industry average mark-up factor to arrive at a taxable
22 food sales of \$576,167 for 2013, \$650,184 for 2014, and
23 \$522,214 for 2015. Total restaurant sales for the audit
24 period was \$1,749,265 for the audit period. The beer and
25 liquor purchases were also combined with their industry

1 average mark-up factor to arrive at bar sales of \$199,272
2 for 2013, \$298,799 for 2014, and \$345,424 for 2015. Total
3 bar sales amounted to \$843,495; Exhibit D, page 37.

4 The audited combined bar and food sales for the
5 audit period was \$2,592,761. When compared to the
6 reported sales of only \$16,000 for the audit period, the
7 difference in taxable sales was \$2,576,761, an overall
8 percentage of error over 16,000 percent. In addition to
9 the unreported taxable sales, the 20 percent reduction of
10 bar purchases accounting for champagne, that the Appellant
11 claims was given away, was assessed at cost which totaled
12 \$43,914 for the audit period; Exhibit D, page 41.

13 The Department decided not to include the \$3,513
14 for cost allowed in self-consumed measure as it was
15 considered immaterial. Additional information provided
16 during the reaudit, the bank deposits from the primary
17 account only were scheduled as the 11 other accounts were
18 not included. The one bank account analysis, which was
19 incomplete and contained only 27 of 36 months, excludes a
20 taxable measure difference of over \$500,000; Exhibit D
21 page 43 to 45.

22 The Appellant's POS summaries were scheduled and
23 showed a substantial difference from what was reported.
24 The recorded sales tax collected, per the POS reports,
25 totaled \$42,732. The Appellant reported only \$1,522 in

1 sales tax for the entire audit period. The differences
2 were consistent and averaged over a thousand dollars in
3 sales tax per month. Net sales, per the POS system,
4 totaled over \$1.2 million; Exhibit A page 13 and in the
5 D&R.

6 The Appellant is requesting a 75 percent
7 reduction be made to food purchases and 75 percent
8 reduction be made for bar purchases for items given to
9 hotel guests. Complimentary food provided by the
10 Appellant is shown in Exhibit D, page 53. First set of
11 complimentary food is a muffin breakfast with coffee or
12 juice provided from 7:00 a.m. to 11:00 a.m., a four-hour
13 window; cookies with coffee or tea from 3:00 p.m. to 4:00
14 p.m., a one-hour window; appetizers consisting of fries,
15 chips, and fruit from 6:30 p.m. to 7:00 p.m., a 30-minute
16 window; champagne only from 6:00 p.m. to 7:00 p.m. In
17 order to obtain the champagne, you need to have a voucher
18 to give it to the bar. That's only a one-hour window.
19 Cake from 8:00 to 8:30 p.m., 30-minutes window.

20 The auditor visited the location from -- on
21 May 11th and again on June 8th, 2017. Based on the
22 visits, the auditor and supervisor allowed a 20 percent
23 reduction in purchases of food. Complimentary food
24 allowance for 2013 was \$49,994. Complimentary food
25 allowed in 2014, \$56,477, and complimentary food for 2015,

1 \$45,320 -- \$312. For a total in the audit period,
2 complimentary food allowed, \$151,783 at cost.

3 Based on the type of food provided to the guest
4 and the time frames allotted for guests to receive
5 complimentary meals, a 20 percent allowance given by the
6 Department is more than reasonable. The Appellant has not
7 provided any further reduction to support an increase to
8 the food allowance already provided. Review of Young's
9 Market vendor survey report did contain description of
10 items to be purchased. A review of the report disclosed
11 very minimal champagne purchases. Again, champagne is
12 what he stated during the audit he was giving away. If
13 you want to see this, it's on Exhibit E, pages 139 to 192.

14 Almost all purchases from this vendor are of
15 liquor. Young's Market accounts for \$83,036 worth of bar
16 purchases. Southern Wine and Spirits, the other liquor
17 supplier, did not have a description of what was purchased
18 only the amounts purchases, which were \$32,214 for the
19 audit period. The three other bar purchase vendors, Ace,
20 Mission and Harbor Distributing are beer vendors. So
21 Champagne would normally not be made from these suppliers.
22 The three combined for a total of \$104,319 in bar
23 purchases.

24 A review of Ace, who did have a description of
25 items purchased, showed no champagne purchases; Exhibit E,

1 pages 86 through 89 or 86 through 90. Complimentary
2 champagne for the audit period was allowed at \$43,913.
3 Based on the above analysis, a 20 percent allowance in the
4 bar purchases is overstated. The Appellant has not
5 provided any further documentation to support an increase
6 to the alcohol allowance already provided.

7 The Appellant has stated in their opening brief
8 that liquor and beer may have been stolen by employees
9 prior to being sold. No documentation has been provided
10 to support this contention.

11 This concludes my presentation, and I'm available
12 to answer any questions you may have.

13 JUDGE STANLEY: Thank you. This is
14 Judge Stanley. Just one little thing before I ask if the
15 panel has questions. You referred to an exhibit as a D&R.
16 Would you please explain that for Appellant.

17 MR. SUAZO: Decision and recommendation,
18 Exhibit A.

19 JUDGE STANLEY: Thank you.

20 Judge Wong, do you have any questions?

21 JUDGE WONG: I have one question for CDTFA
22 regarding the 20 percent allowance for food and beverages.
23 CDTFA formulated that based on auditing similar
24 businesses; is that correct?

25 MR. SUAZO: Based on type of food that was given

1 away at this location and the time frame windows that are
2 allowed, basically, you're just getting a muffin. You're
3 not getting anything -- any other breakfast other than
4 juice a drink and a coffee. On the cookies, all you're
5 getting is a cookie with coffee and tea, if you wish to
6 have it. How many people would actually consume it is
7 unknown.

8 The appetizers based on Yelp and based on the
9 auditor's visit, was French fries, chips, and a fruit.
10 And it's only a 30-minute to go from, I believe, it was
11 6:30 to 7:00. So how many people would actually go to
12 complimentary meal at that time frame is unknown. And
13 again for the cake, it's from 8:00 to 8:30. Again, it's
14 only a half-hour window.

15 On the alcohol when they were initially doing
16 that audit, it was stated that champagne was being given
17 away. Based on the review of Young's Market, there's
18 minimal, very minimal champagne being purchased from
19 Young's Market. I couldn't tell if there's any champagne
20 being purchased from Southern Wines because it didn't have
21 a description.

22 And as we said, Gallo who might have been one of
23 the distributors giving wine, was not included in this
24 computation. The beer venders would not be selling wine
25 to the bar and restaurant.

1 JUDGE WONG: This is Judge Wong. Okay. Thank
2 you. No further questions.

3 JUDGE STANLEY: Thank you.

4 Judge Dang, do you have any questions?

5 JUDGE DANG: This is Judge Dang. I do not have
6 any questions. Thank you.

7 JUDGE STANLEY: Okay. This is Judge Stanley.
8 Mr. Sharma, I'm going to give you five minutes if you want
9 to respond to what the CDTFA has said in their
10 presentation. You may proceed.

11 MR. SHARMA: Sharma. Yes thank you. Not really.
12 It was right to the point it was very thorough his
13 presentation. Other than that, I just hope the best will
14 come out of this. Thank you.

15 JUDGE STANLEY: Okay. At this time I'm going to
16 close the record in this case, and it's submitted for a
17 decision. At the conclusion of the hearing the panel will
18 meet and discuss the case.

19 And, Mr. Sharma, you will have a written decision
20 within 100 days of today. And because there are no other
21 hearings after this one, I'm going to adjourn for the day.

22 Thank you all for participating.

23 (Proceedings adjourned at 4:20 p.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for
the State of California, do hereby certify:

That the foregoing transcript of proceedings was
taken before me at the time and place set forth, that the
testimony and proceedings were reported stenographically
by me and later transcribed by computer-aided
transcription under my direction and supervision, that the
foregoing is a true record of the testimony and
proceedings taken at that time.

I further certify that I am in no way interested
in the outcome of said action.

I have hereunto subscribed my name this 30th day
of July, 2020.

ERNALYN M. ALONZO
HEARING REPORTER