

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH : BANGALORE**

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.1390/Bang/2025
Assessment Year : 2018-19

Shri. Roshan Mohan, M-30C, Forest Quarters, 18 th Main, Malleshwaram, Bangalore – 560 055. PAN : AJQPR 4955 Q	Vs.	ITO, Ward – 7(2)(5), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Deepak Chopra, CA
Revenue by	:	Shri. Ganesh R. Ghale, Advocate, Standing Counsel for Revenue.

Date of hearing	:	10.09.2025
Date of Pronouncement	:	25.09.2025

ORDER

Per Laxmi Prasad Sahu, Accountant Member :

This appeal is filed by the assessee against the Order passed by the CIT(A) vide DIN and Order No.ITBA/N FAC/S/250/2025-26/1076128451(1) dated 08.05.2025 on the following grounds of appeal :

1. The learned assessing officer has erred in passing the assessment order in the manner passed and the learned Commissioner of Income-Tax (Appeals) has erred in confirming the order passed by the Assessing officer. The orders as passed/confirmed are bad in law and are required to be quashed.

(Tax Effect of above ground: 3,57,743/-)

Without prejudice:

2. The learned Assessing Officer has erred in disregarding the revised return of income and proceeding to assess the appellant's income based on the original return. The learned Commissioner of Income Tax (Appeals) has further erred in upholding such an assessment. The assessment, as made by the Assessing Officer and confirmed by the CIT(A), is erroneous, contrary to law, and therefore liable to be quashed.
(Tax Effect of above ground: 3,57,743/-)
 - 3.1. The authorities below have erred in:
 - a. determining the nature of the appellant's business based on the section under which tax was deducted at source by the recipient of the appellant's services.
 - b. not appreciating that the appellant's business activities are covered under provisions of Sec 44AD of the Act and not 44ADA of the Act.
 - c. making additions and assessing appellant's income at Rs. 15,84,970/-.
 - 3.2. On the facts of the appellant's case and applicable law:
 - a. the classification of the appellant's business should be made with reference to the actual nature of services rendered and not TDS provisions invoked by the payer.
 - b. the appellant is an eligible assessee carrying out eligible business squarely covered under provisions of Sec 44AD of the I.T. Act.
 - c. the additions made are contrary to the provisions of law and also facts of the appellant's case
2. from the above grounds it is clear that sole issue raised by the assessee is regarding not accepting revised return filed by the assessee.
3. Briefly stated, the facts of the case are that assessee filed his return of income on 08.08.2018 declaring total income of Rs.16,44,968/- for Assessment Year 2018-19 and has revised return of income on 29.03.2019 declaring total income of Rs.2,47,000/-. The case was selected for scrutiny to examine the issue of reduction of income in revised income as compared to original return of income. Accordingly, during the scrutiny, the AO asked for explanation / justification as noted to substantiate such reduction of income in the revised return of income in comparison to original return of income filed.

In response assessee submitted that original return of income was filed by taking the gross turnover as applicable under section 44AD of the Act partly and balance turnover as applicable under section 44ADA of the Act resulting in income of Rs.16.44 lakhs. The original return of income was filed in consequence with the TDS deducted applied on the gross turnover as applicable to provisions of sections 194C and 194A of the Act resulting in income of Rs.69.44 lakhs was the contention of the assessee. Further, he claimed that same is revised by admitting 6% as applicable under section 44AD of the Act on the entire business turnover resulting in deduction of income and accordingly contended the non-applicability of provisions under section 44AD of the Act as submitted on the part of the income covered by TDS under section 194J of the Act. During the course of assessment proceedings assessee's contention is to hold such non-applicability of section 44ADA of the Act to the business turnover involving qualified service under section 194J of the Act as admitted in the original return of income as attributable to such business turnover. His reason is not maintainable as explained by the AO in the Assessment Order. Accordingly, AO considered original return of income and did not consider revised return filed by the assessee.

4. Aggrieved from the above Order, assessee filed appeal before the learned CIT(A) and the learned CIT(A) after considering the detailed submissions and discussions observed as follows:

“Thus, the sole motive of assessee behind filing revised return was to present a lower income than actual, by creating a false notion about nature of work.

It was because of this reason that the assessee cleverly changed the nature of business (as mentioned earlier) in his revised return of income than as shown in original return of income, despite the fact that it is an unchangeable fact.

In view of above facts and discussion it is clear that the income declared by assessee in revised return of Rs. 2,47,000/- is not the correct income and the income declared in original return of Rs. 16,44,968/- is the correct income.

And hence the total income of the assessee is taken as Rs. 16,44,968/- as declared in original return of income.”

5. Aggrieved from the above assessment order, assessee filed appeal before the Tribunal. During the course of hearing the learned Counsel reiterated the submissions made before the lower authorities and submitted that assessee is engaged in rendering public relations services which is called PR services and it does not fall under section 44ADA of the Act. Assessee is not providing any professional services. Professional services require some specialization in the field of providing services. Therefore, as per the provision of section 44ADA of the Act, assessee does not fall under any of the services mentioned in section 44ADA of the Act and he also submitted that the Board has prescribed specified the following services which comes under section 44AD of the Act Notified professions : (a) The profession of authorized representative; and (b) the profession of film artist (actor, cameraman, director, music director, art director, dance director, editor, singer, lyricist, story writer, screen play writer, dialogue writer and dress designer) – Notification : No.SO17(E), dated 12-1-1977/Profession of Company Secretary – Notification : No.SO 2675, dated 25.9.1992/Profession of Information Technology – Notification : No.SO385(E), dated 4-5-2001.

6. On the other hand, learned DR relied on the Order of the lower authorities and strongly contested that revised return filed by the assessee is not acceptable because there is no omission or mistakes in the original return filed by the assessee as per section 139(5) of the Act. The original return filed by the assessee after thoughtful considerations there is no omission or wrong submission. Therefore, learned CIT(A) has rightly dismissed appeal of the assessee. He further submitted that agreement produced by the learned Counsel is not related to the impugned Assessment Year. It relates to the following Assessment Years.

7. In the rejoinder, the learned Counsel undertook that the facts, terms and conditions and contents of the agreement are same only the period is changed by mistake for the following Assessment Year's agreement is produced and submitted that available agreement must be considered and there is no change in terms and conditions for the previous Assessment Year, just it is a renewal

8. Considering the rival submissions, we noted that originally assessee has filed his return of income on 18.08.2018 declaring income of Rs.16,44,968/- and adjusted the TDS deducted on the payments received. On going through the computation of income filed which is placed at Paper Book Page No.44, it is noted that assessee has computed his income under section 44AD of the Act of Rs.1,82,534/- and under section 44ADA of the Act, presumptive profits of Rs.16,44,968/-. Later on 28.03.20-18, assessee has revised his return of income and computed gross total income from business / profession of Rs.3,07,001/- and the entire receipts were computed as income under section 44AD of the Act. The revised return filed by the assessee was not accepted by the AO computed under section 44AD of the Act. To decide

this issue, whether the assessee will cover u/s 44AD or not, it is necessary to go to the contents of the agreement which is placed at Paper Book Page Nos.64 to 66. The relevant part of the agreement is as under:

M/s. Sparsh Hospital, having its office at #146, Infantry Road, Bangalore - 560001; Tel: +91 80 4910 8111, GSTIN: 29AAICS6819E1Z1; duly represented by its Chief Marketing Officer, Mr. Guruprasad B. R

And

M/s. Pepper Interactive Communications, having its office at #120, Lower G Floor, Hoodi Apts, Cunningham Road, Bengaluru - 560082. Tel: +91 80 4117 9428, GSTIN: 29A-JQPR4955G2ZE; duly represented by Mr. Roshan Mohan.

Pepper Interactive Communications (hereinafter referred to as the "Consultant" or "Agency") will act as an external Communications counsel and agent for Sparsh Hospital (hereafter referred to as "Client").

The agreement is valid from **16th January, 2019 and ending on 15th January, 2020** and is subject to revision on completion of **12 months** of commencement.

If neither party wishes to terminate the association at the end of the agreement period, it would be considered as a continuation of the engagement at the agreed terms listed in this document, along with any amendments mutually agreed upon.

1. The agreement will entail for the client:

- I. **Exclusivity** of counsel to the Client, and the Consultant on its part will not take on any other Client with conflicting interest during this period
- II. **Confidentiality** on information given by the Client to the Consultant during the course of the association
- III. **Planning** of all public relations activities, including media activities such as press release developments, media interactions, bridge-build meetings and others; event property development and coordination for the Client within the retainer period
- IV. **Strategy development and execution** as required by given Mandate in the city of Bengaluru

2. Costs of Association:

- I. The agency will charge a **monthly retainer fee of INR 1,00,000 plus applicable government taxes**. The fee includes PR Strategy & Execution only, as outlined in the quote. This fee is subject to revision at the end of 12 months of engagement.

II. In addition to fees, the Client shall arrange to separately reimburse the Consultant for reasonable and actual out-of-pocket or third-party expenses incurred for the client from the Start Date till the completion of the services provided hereunder. Third-party expenses include translations, television tracking, transport for the media, photography, videography, graphic design, illustrations, artwork etc.

No out of pocket or third-party expenses will be incurred without prior approval of the Client. All out-of-pocket expenses will be charged on actual basis, supported by documentary proof

III. The invoice for PR Activities will be raised before the 5th of each month and is to be cleared before the 20th of the same month

IV. Travel and accommodation of agency account executives out of Bangalore, if required, will be charged at actuals, along with other expenses incurred on behalf of the client during the course of work

V. Any large scale events required as part of the PR mandate would be charged nominally over and above the monthly retainer fee.

3. Scope of work

I. PR Activities

- a. The agency will identify the strategies required for accurate positioning of the brand, as defined by the Client. The agency may further advise the client on changes in positioning if required.
- b. The agency will draft press releases, backgrounders and other documents required for PR activities, based on the information shared by the client. Extensive or Technical content and content for Authored articles, Ghost writing etc. will have to be provided by client. Alternately, the agency can assist in getting this executed through external vendors on approval of the client, and are subject to additional costs.
- c. The agency will disseminate press releases, initiate media interactions, bridge-build meetings, reviews, media gifting and other required activities for the brand representation. This also includes influencers identification and engagement at additional costs per campaign.
- d. The agency will explore & identify suitable opportunities for cross promotions for the brand and synergies with other entities, and will support the client in this endeavour; however the agency will not be held responsible for furthering communications or closing business deals between the parties in question.
- e. While all efforts will be made by the agency to ensure that the client is featured in desired target publications, no guarantees are made regarding earned media. It is our professional experience that we achieve earned media placements for our clients, however we do not control editors, publishers or news assignment editors and in no way can we entirely promise that they will publish or broadcast information about the Client.
- f. Press Releases & other collateral to be shared with the media will be disseminated only after approval from the Client. The Client is responsible for ensuring the accuracy of such information.
- g. The agency will obtain from the Client, prior to any use, clearance of any promotional material suggested by the agency.

For Pepper Interactive Communication

- h. Reporting: The agency will monitor media exposures on the client on an on-going basis and share email scans of the same. The media exposures will be collated into a dossier and the soft copy of the same will be shared with the client at the end of each month
 - i. Industry and competition tracking, if required, can be arranged on request at an additional cost.
 - j. Crisis Communications is not included in the retainer fee and agreement. In case of Crisis Communication scenario, the agency will depute a senior team at additional terms & costs to work closely with the client to mitigate any damages caused, while strategising on the best ways to minimise loss of equity within a given period of time.
 - k. Deliverables: A minimum of 60 coverages per quarter, including interviews, press release coverages, feature stories, authored articles and industry story participations. To increase current media Share of Voice in the industry by 20% in 6 months.
9. On careful reading of the above agreement, the agreement itself says as under para 3. “The agreement says that business / services paid outside by the assessee is a consultant agency and he will get external communication / agent. From the above agreement it is clear that assessee is providing agency services”.

M/s. Pepper Interactive Communications, having its office at #120, Lower G Floor, Hoodi Apts, Cunningham Road, Bengaluru - 560082. Tel: +91 80 4117 9428, GSTIN: 29A-JQPR4955G2ZE; duly represented by Mr. Roshan Mohan.

Pepper Interactive Communications (hereinafter referred to as the “Consultant” or “Agency”) will act as an external Communications counsel and agent for Sparsh Hospital (hereafter referred to as “Client”).

10. The agency service is out of purview of section 44AD of the Act. Section 44AD(6)(3) of the Act says as under:

44AD. [Special provision for computing profits and gains of business on presumptive basis. [Substituted by Act 33 of 2009, Section 20 (w.e.f. 1.4.2011).]

[(6) The provisions of this section, notwithstanding anything contained in the foregoing provisions, shall not apply to-

- (i) a person carrying on profession as referred to in sub-section (1) of section 44AA;
- (ii) a person earning income in the nature of commission or brokerage; or

(iii) a person carrying on any agency business.]

11. Assessee relied on the following judgments:

- i. CIT Vs. Bhagwan Broker Agency on 11 May 1993
- ii. Lakshminarayan Ram Gopal and Son Ltd., Vs. The Government of Hyderabad on 1 April 1954
- iii. Pramod-Lele Vs. ITO, ITAT, Mumbai

12. The conjoint reading of the agreement noted supra and section 44AD(6)(iii) noted supra the agency business is not covered under the provision of section 44AD of the Act. Accordingly, the revised return filed by the assessee is not in the line of section 139(5) of the Act.

11. The case laws relied on by the learned Counsel are not applicable to the facts of the present case since assessee is providing services which is clear from the agreement noted supra.

13. Accordingly, there is no omission or wrong statement in the revised return filed by the assessee. The AO not accepting the revised return is correct.

14. In the result, appeal filed by the assessee is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

**(LAXMI PRASAD SAHU)
Accountant Member**

Bangalore.

Dated: 25.09.2025.

/NS/*

Copy to:

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| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR,ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.