

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SMT BEENA A PILLAI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2813/Del/2015
(Assessment Year: 2010-11)

DCIT, Circle-19(1), New Delhi	Vs.	Offcom Systems Pvt. Ltd, C-20B, Ground Floor, Kalkaji, New Delhi PAN: AAACO0809N
(Appellant)		(Respondent)

Revenue by :	Smt Naina Soin Kapil, Sr. DR
Assessee by:	Shri Dalip Kaul, CA
Date of Hearing	24/01/2019
Date of pronouncement	12/03/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the revenue against order of ld CIT (A)-7, New Delhi dated 16.02.2015 for Assessment Year 2010-11. The Ld AO has raised following ground of appeal:-

"1. On the facts in the circumstances of the case, the ld CIT(A) has erred in deleting the addition of Rs. 88,88,733/- made by the AO on account of advance for annual maintenance contract (AMC) without appreciating the fact that there were no advances appearing the books of accounts."

2. Brief facts of case shows that assessee is a company who filed its return of income on 14/10/2010 declaring total income of Rs. 11014487/-. Assessment u/s 143 (3) of income tax act was passed on 25/3/2013 at total income of INR 1 9903220/- only addition was of Rs. 8888733/- on account of advance for annual maintenance contract in hands of assessee. Assessee challenged above addition before learned CIT (appeals) – 7, New Delhi who deleted above addition and therefore revenue is in appeal before us.
3. Assessee is engaged in business of trading and servicing of uninterrupted power supply equipments mainly as an authorised business partner of

Emerson network Power India private limited for providing after sale services including warranty support, extended warranty support an annual maintenance contract services for their range of UPS. As per annual maintenance contracts assessee is to provide maintenance and support normally for a period of one year and beyond from date of contract. Therefore, from annual maintenance contract services assessee had shown income only that part of revenue, which pertained to annual maintenance contract for financial year. Accordingly pro rata revenue based on number of months income was shown during this year and balance sum received was carried forward as advance annual maintenance contract income which would be shown as an income in subsequent year on same basis. assessee is following this practice consistently. For this year learned assessing officer noted that, advance received from customer reveals that company has received Rs. 8888733/- as advance for annual maintenance contract. Assessee was asked to show as to why above receipt is not treated as income of assessee for year. Assessee explained nature of business as well as accounting system of assessee and submitted that assessee is following mercantile system of accounting and according to that time, wise revenue has been recognized. It was further stated that in subsequent years above revenue has been recognized whenever it fell due. Assessee also explained that it is one of dealer and service providers. Learned assessing officer requisitioned account from customer u/s 133 (6) to explain as to how customers have accounted for this annual maintenance contract in their books of accounts. Such notices returned back or undelivered. Thereafter on persuasion of assessee, customer supplied detail on 26/03/2013 and explained about status of annual maintenance contract services income. Learned assessing officer noted that M/s Emerson network Power India private limited has claimed above amount is expenditure during current year and no advances are appearing in their books of accounts as advance AMC paid. Further, those parties in favour of assessee also deduct tax. Therefore learned assessing officer treated advance annual maintenance contract received a sum of Rs. 8888733/- as income of assessee.

4. Assessee aggrieved with order challenged above addition before learned CIT – A who deleted addition. learned CIT – A noted that that assessee has received advance amount on account of annual maintenance contract and out of which amount pertaining to current year has been treated as income in current year and balance is carried over to next years. Assessee is maintaining its books of accounts on mercantile basis and there was no change in accounting system. He further held that amount received as per AMC contract was nothing but an advance which gets converted into revenue in amount pertaining to period following in subsequent financial year of AMC support is carried a considered as income in subsequent year. Every year income is shown. He further noted that amount received by appellant at point of contract was converted into revenue as each day progressed. Whole income has not accrued to appellant at time it entered into contract. Therefore, he deleted addition.
5. Learned departmental representative vehemently supported order of learned assessing officer whereas learned authorised representative referred his submission before learned CIT – A and supported order of learned CIT – A.
6. We have carefully considered rival contention and perused orders of lower authorities. Looking to nature of business of assessee wherein assessee is a service provider of uninterrupted power supply equipments. At time of sale of those goods, assessee enters into annual maintenance contract with buyer, which spreads over more than one year. Assessee receives amount of annual maintenance contract over an agreed contract period in advance. Assessee accounts in income amount pertaining to financial year and balance sum was shown as income received in advance. Such income received in advance is also converted into income in subsequent year according to time line of such contract. Above system of accounting cannot be found fault as income is accounted for and offered for taxation on accrual basis. Above method of accounting as been followed by assessee consistently in earlier years as well as in subsequent years and it has not been disturbed. In view of this, we do not find any infirmity in manner of offering of income by assessee on an annual maintenance contract amount based on proportionate amount over a period. It is not case that all income

accrued up to 31/3/2010 has not been accounted by assessee as income and offered for tax. Merely because payer has deducted tax at source, does not become income of recipient. In similar manner and year of claim of expenses by payer also does not determine income in hands of recipient. Amount received was only as charges for services to be rendered in future. Services may be rendered or may not be rendered depending upon withdrawal of money as and when customer required. Therefore, it is highly uncertain as to whether it would at all remain as income of assessee. Only when services are rendered assessee has a right over amount that was paid as advance. Until then, it has no right over it. It is in that sense until then, it cannot be considered as an income of assessee and is not exigible to tax. Therefore, we confirm order of learned CIT – A and direct learned assessing officer to delete addition of Rs. 8888733/-. Accordingly, ground number 1 of appeal of learned assessing officer is dismissed.

7. Accordingly, appeal of revenue is dismissed.

Order pronounced in open court on 12/03/2019.

-Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 12/03/2019
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi