

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'C', KOLKATA**

[Before Dr. Manish Borad, Accountant Member &  
Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 1819/Kol/2017**  
**Assessment Year : 2013-14**

|  |     |                            |
|--|-----|----------------------------|
| Orga Systems India Private Limited (Now known as Redknee India OS Private Limited) | Vs. | DCIT, Circle-7(2), Kolkata |
| PAN: AABCO 4121 G  |     |                            |
| Appellant  |     | Respondent                 |

|                       |                         |
|-----------------------|-------------------------|
| Date of Hearing       | 18.05.2023              |
| Date of Pronouncement | 28.07.2023              |
| For the Assessee      | Shri B.R. Dutta, FCA    |
| For the Revenue       | Shri G.H. Sema, CIT, DR |

**ORDER**

**PER MANISH BORAD, AM:**

This appeal of the assessee is directed against the order of Id. DCIT, Circle-7(2), Kolkata dated 30.06.2017 framed u/s 143(3) r.w.s. 144C(13) of the Act. The assessee has raised the following grounds of appeal:

*"1. That the learned Deputy Commissioner of Income Tax, Circle - 7 (2), Kolkata (here-in-after referred to as 'AO') has erred in law and on facts in determining the total income at Rs.1,54,50,560/-.*

*2. That the computation of total income as well as the mode of computation is bad in law and against the actual facts and evidence on record.*

*3. That the AO has erred in law and on facts and in the circumstances of the case in making reference to the Transfer Pricing Officer (TPO) mechanically without considering the merit of the case.*

*4. That on the facts and in the circumstances of the case the TPO has erred in not properly interpreting the accounts/annual reports available in public domain.*

5. That on the facts and in the circumstances of the case the TPO has failed to comply with the directions of the Hon'ble Dispute Resolution Panel in full although the directions issued are binding on him.

6. That the AO, on the advice of Transfer Pricing Officer, has erred in facts and circumstances of the case in making an upward adjustment of Rs.1,54,50,560/- in the price as per books of account.

7. That the Transfer Pricing Officer(TPO) has grossly erred in computing the Arm's Length Price by taking in to account the operating profit percentage over total cost of Thirdware Solutions Limited being functionally different as its operational income includes activities in other Professional, Technical and Business Services [Product or Service Category (ITC 4 digit) code 9983] and also Acquisition /purchase of IT hard Ware and software including software as service (SAAS), as per the declaration of the Company in its Audited profit & Loss Account for the financial year 2012-13 and that the volume of software services in monetary terms has not been separately disclosed although the highest contributing product or service has been declared at 135.32 Crore against the total revenue of 142.25 Crore.

8. That the Transfer Pricing Officer has grossly erred in considering the operating cost instead of total cost less finance charges/interest as disclosed in the published accounts of the comparables while computing the profit percentage for determining the Arm's Length Price

9. That on the facts and circumstances of the case the AO has erred in charging interest and the Appellant denies its liability of Interest Rs.5,37,036/- under section 234C.

10. That the Appellant craves leave to add, alter, amend, amplify or modify any or all of the above grounds of appeal on or before the time of hearing of appeal.”

2. At the outset, ld. counsel for the assessee stated that grounds of appeal no. 1,2,3,6,8,9 and 10 are general in nature and do not require any specific comments at this juncture. Accordingly, no adjudication is called for on these grounds as

they are general and consequential in nature and in the alternative not pressed by the ld. counsel for the assessee.

3. Now, effective issues are raised in Ground No. 4, 5, & 7 and the grievance through these grounds are confined to challenging the findings of the Assessing Officer of including three comparables i.e. CCS Technergy Ltd., KPIT Global Solutions Ltd. and Thirdware Solutions Ltd. for the purpose of applying profit level indicator in order to compute arm's length price/arm's length mean margin profit.

4. Facts in brief are that the assessee is a private limited company and carries out the functions relating to information technology software services for its holding company and 98.97% equity of assessee-company is held by Orga System GNBH. For the year under consideration for assessment year 2013-14, assessee-company entered into international transaction with its associated enterprise. The ld. AO referred the matter to Transfer Pricing Officer for determination of arm's length price of such transaction u/s 92CA(1) of the Act. The ld. TPO vide order dated 13.10.2016 adopted the arm's length mean margin profit of 23.05% thereby making an upward adjustment of Rs. 1,95,53,360/-. Based on the TPO's report, a draft assessment order is prepared u/s 144C of the Act on 02.11.2016 to which the assessee-company filed an objection with the Dispute Resolution Panel. The ld. DRP after considering the assessee's contention gave direction vide order dated 25.04.2017 recommending certain direction to be followed by AO and TPO.

The direction of ld. DRP were considered by ld. TPO and a fresh order u/s 92CA read with section 154 & 144C(5) of the Act was framed on 27.06.2017 and the PLI was computed at 20.59% as against 23.05% computed in the order dated 13.10.2016. The ld. AO accordingly in view of the directions and compliances prepared the following final list of comparables:

| Sl. No.                      | Comparables                        | O.P. Total Cost (%) |
|------------------------------|------------------------------------|---------------------|
| 1                            | Dynacons Technologies Ltd.         | 6.27%               |
| 2                            | 3D PLM Software Solutions Ltd.     | 30.20%              |
| 3                            | Quintegra Solutions Ltd.           | 10.44%              |
| 4                            | Akshay Software Technologies Ltd.  | 7.42%               |
| 5                            | CCS Technergy Ltd.                 | 10.43%              |
| 6                            | KPIT Global Solutions Ltd.         | 36.02%              |
| 7                            | R.S. Software (India) Ltd.         | 17.92%              |
| 8                            | Thirdware Solutions Ltd.           | 37.45%              |
| 9                            | Virstra I-Technology Services Ltd. | 29.17%              |
| Simple Arithmetic Mean (PLI) |                                    | 20.59%              |

5. Now, the assessee is in appeal assailing the order of ld. DCIT u/s 143(3) r.w.s. 144C(13) of the Act only to the extent of inclusion of following three comparables namely CCS Technergy Ltd., KPIT Global Solutions Ltd. and Thirdware Solutions Ltd.

6. So far as CCS Technology is concerned, Ld. counsel for the assessee submitted that as per audited statement of the company available on the website of Ministry of Corporate Affairs loss of 17.09 cr is declared whereas as per the TPO there is a profit of 2.26 cr. Since there is a difference in the financial data, the inclusion of CCS Technology Ltd. as comparable is uncalled for.

6.1. As regards KPIT Global Solutions Ltd., it is stated that the said company has been amalgamated and financial data is not

available. KPIT Global Solutions have been merged with KPIT Technologies Ltd. whose limited party transactions exceeds 25% being RPT filter and as such deserved to be excluded from the list of comparables.

6.2. As regards Thirdware Solutions Ltd. it is submitted that pre-dominant activity of the company cannot be verified since product wise segment analysis has not been disclosed and the segment reporting is only on geographical segment basis. Therefore, pre-dominant activity of the company is not known to the public. He further submitted that Thirdware Solution Pvt. Ltd. is engaged in diversified activity including software product as well as turnkey project and since the assessee company is only engaged in software development services to its associate enterprise, the same cannot be compared with Thirdware Solutions Pvt. Ltd. In support, reliance was placed on the decision of Co-ordinate Bench in the case of *DCIT vs EMC Software and Services (India) Pvt. Ltd.* [TS-475-ITAT-2019(Bang)-TP and Co-ordinate Bench Delhi in the case of *Qualcomm India Pvt. Ltd.* ITA No. 1810/Del/2014 dated 03.06.2019.

7. On the other hand, ld. departmental representative vehemently argued supporting the orders of lower authorities and also stated that as far as CCS Technology Ltd. and KPIT Global solutions Ltd. is concerned the matter may be restored to the file of assessing officer for necessary verification and as regards Thirdware solutions Ltd. he submitted that the ld. TPO has examined this aspect in detail as per the direction of ld. DRP and

has observed that predominant activity of Thirdware Solutions Ltd. is software development services, therefore, it should be included as a comparable.

8. We have heard rival contention and perused the record before us. The only grievance of the assessee is that ld. AO erred in including following 3 comparables for the purpose of computing profit margin:

| <u>Name</u>                           | <u>OP/TC%</u> |
|---------------------------------------|---------------|
| <i>i. CCS Technology Ltd.</i>         | <i>10.43%</i> |
| <i>ii. KPIT Global Solutions Ltd.</i> | <i>36.02%</i> |
| <i>iii. Thirdware Solutions Ltd.</i>  | <i>37.45%</i> |

9. As far as CCS Technology Ltd. and KPIT Global Solutions Ltd. is concerned, we notice that in the case of CCS Technology Ltd., ld. counsel for the assessee has brought to our notice the difference in the figures of operating profit appearing in the order of Ld. Transfer Pricing Officer which is 2.26 cr and the operating profit margin is 10.43% whereas as per the audited statement of accounts available on the website of Ministry of Corporate Affairs (page 2 to 24 of the paper book), there is an operating loss of Rs. 17.09 cr during the financial year 2012-13 which is resulting into a negative profit margin of 41.85%. Since the very basis of computing the overall profit margin of assessee company at Rs. 20.59% includes the profit margin of CCS Technology Ltd. and as there is an anomaly in the figures of profits/losses/profit margin as considered by the ld. TPO vis-à-vis the data available on MCA website, we deem it appropriate to restore this issue of including

CCS Technology Ltd. as comparable to the file of assessing officer who shall examine the correctness of claim of the assessee and after giving due opportunity to the assessee and examining the relevant records adopt the correct profit margin of the alleged comparable company in order to calculate the overall profit margin of the assessee company for ascertaining ALP.

10. So far as KPIT Global Solutions Ltd. is concerned, the operating profit margin of 36.02% has been taken by the ld. TPO but the claim of the assessee through its ld. counsel is that no specific data of KPIT Global Solutions Ltd. is available since this company stands merged with KPIT Technologies Ltd. The copy of the order of Hon'ble Bombay High Court dated 28.08.2014 has been placed on record. This fact is not denied by the ld. counsel for the assessee that KPIT Global Solutions Ltd. carries on similar type of activity as that of assessee and if financial datas of this company are available on the public domain then it should have been included as comparables. It is also noteworthy that the said merger of the KPIT Global Solutions Ltd. with KPIT Technologies Ltd. has come into effect by the order of Hon'ble Court dated 28.08.2014 and before us the issue is for financial year 2012-13 therefore, for this financial year that is in appeal before us there has to be separate financial datas of KPIT Global Solutions Ltd. Since ld. TPO included the same and has taken the figures from some valid sources, still we grant an opportunity to the Ld. assessee officer to examine the financial datas of KPIT Global Solutions Ltd. and if the same are available on public domain or the sources of ld. TPO of getting those details are in accordance

with law then the same shall be included in the list of comparables and if such details are not available on public domain then it should not be included as comparables. Thus this issue of including of KPIT Solutions Ltd. as a comparables is also allowed for statistical purposes.

11. Now, we are left with the alleged comparable Thirdware Solutions Ltd. The contention of the assessee is that the ld. DRP in its order dated 25.04.2017 at page 29 dealing with Thirdware Solutions Ltd as a comparables has observed that if the software development activities of the said company is found to be predominant, it shall be retained as a comparables, otherwise, it may be excluded. Before us, ld. counsel for the assessee is harping this finding of Ld. DRP and contending that due to lack of proper details of segmental representation of the activities being carried out by Thirdware Solutions Pvt. Ltd, it cannot be said that it is predominantly engaged in the activity of software development solution. However, we do not find any merit in this contention of the ld. counsel for the assessee for the reason that subsequent to the direction of ld. DRP vide its order dated 25.04.2017, ld. Transfer Pricing Officer has carried out the proceeding u/s 154 of the Act and has also revised the operating profit margin calculation and also examined the said aspect of Thirdware Solutions Ltd. being predominantly engaged in the software development activity and after necessary examination and verification, the ld. TPO has observed that Thirdware Solutions Ltd. is engaged in software development services and accordingly it is to be retained as a comparables. Before us, ld.

counsel for the assessee has filed certain information about Thirdware Solutions Ltd and on perusal of the said details filed on 05.01.2022, we notice that under the head of disclosure of general information about the company and more specifically under the head of disclosure of pre product or services, the major head of product or services is said to be code 9983. The highest turnover contributing product or service (ITC 8 digit) code is mentioned as 99831327. On going through the code list prepared by Central Statistics Officer, National Statistical Organisation, we observe that national product classification for service sector has been prepared by the Govt. and in this list 9983 is a product thereafter 99831 is the code of management and management services for information technology services and then 9983132 is the code of IT support services and the specific code is 99831327. The details of these codes are appearing in the disclosure of pre-product or services stated by the Thirdware Solutions Ltd. We find that the predominant activity of this company is IT support services and acquisition/purchase of IT hardware and software including software as a service. The contention of the assessee that there is no detail available that whether the predominant activity of the Thirdware Solutions Ltd. is software development services has no merit. The data is very much available on public domain which loudly states that Thirdware Solutions Ltd. is engaged in software development services and the major turnover is from this activity only. Under these given facts and circumstances, we fail to find any inconsistency in findings of ld. assessing officer including Thirdware Solutions Ltd. as a

comparables for the purpose of calculating average operating profit margin. Thus ground no. 7 raised by the assessee is dismissed. Accordingly, ground no. 4 & 5 are allowed for statistical purposes, ground no. 7 is dismissed and remaining grounds are held to be infructuous being general in nature and/or no specific argument has been addressed before us.

12. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 28.07.2023.

Sd/-

(Sonjoy Sarma)  
Judicial Member

Sd/-

(Manish Borad)  
Accountant Member

Dated: 28.07.2023

*Biswajit*

Copy of the order forwarded to:

1. Appellant- Orga Systems India Private Limited (Now known as Redknee India OS Private Limited), DLF IT Part-IIm Okit Bi, UUF/I, Action Area-II, Block-IC, 3<sup>rd</sup> Floor, Rajarhat, Kolkata-700156.
2. Respondent – DCIT, Circle-7(2), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata