

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं माननीय श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष ।
BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
HON'BLE SHRI S. R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकरअपील सं./ITA Nos.799/Chny/2025, Assessment Year: 2017-18
आयकरअपील सं./ITA Nos.800/Chny/2025, Assessment Year: 2018-19
आयकरअपील सं./ITA Nos.801/Chny/2025, Assessment Year: 2019-20
आयकरअपील सं./ITA Nos.802/Chny/2025, Assessment Year: 2020-21
आयकरअपील सं./ITA Nos.803/Chny/2025, Assessment Year: 2021-22

**Karunya educational and
Research Trust,**
No.16, DR.D.G.S.Dhinakaran Road,
Raja Annamalaipuram,
Chennai-600 028.
[PAN:AAATK0225H]

Vs. Deputy Commissioner of Income Tax,
Central Circle-3(1),
Chennai.

(अपीलार्थी/Assessee)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Mr. V.Nagaprasad, Advocate &
Ms.S.Revathy, F.C.A.

प्रत्यर्थी की ओर से /Respondent by

: Mr. M.K.Biju, CIT DR

सुनवाई की तारीख/Date of Hearing

: 05.06.2025

घोषणा की तारीख /Date of Pronouncement

: 07.07.2025

आदेश / ORDER

PER BENCH

1. These five appeals in ITA Nos.799/CHNY/2025 to 803/CHNY/2025 for assessment years (A.Y) 2017-18 to 2021-22 respectively arise out of the orders dated 28.02.2025 passed by the Id. Commissioner of Income Tax (Appeals), Chennai – 20 (Id. CIT(A) in short) against the orders of assessment passed u/s.143(3) r.w.s 153A of the Income-tax Act, 1961 (hereinafter referred to as Act)

dated 31.03.2022 by the Deputy Commissioner of Income Tax, Central Circle – 3(1), Chennai (hereinafter referred to as AO).

2. The core issue that runs through all the five appeals is regarding the claim of software charges incurred by the Assessee. The Id. CIT(A) passed a detailed order in respect of AY 2017-18 and followed the same in the orders for other 4 assessment years. The appeal for A.Y 2017-18 is taken first as a lead case.

3. The grounds of appeal are as under:

1. *"The order of the learned (Ld.) CIT(A) is erroneous, arbitrary and is liable to be quashed as the same is contrary to the facts of the case and provisions of law.*
- 2.1 *The Ld. CIT(A) grossly erred in upholding the assessment made by the AO, as the same has been made in the absence of any incriminating material to substantiate the same.*
- 2.2 *It being settled law that no addition can be made in a search assessment in the absence of any incriminating material, the Ld. CIT(A) erred in upholding the assessment made.*
- 3.1 *The Ld. CIT(A) erred in failing to delete the addition of Rs. 48,07,552/- and ought to have allowed the expenses in full.*
- 3.2 *The Ld. CIT(A) erred in restricting the expenses of 'software usage charges' to the extent it is paid to Microsoft Azure & salary paid to staff of M/s. TFMSS and in disallowing the remaining balance as not applied for the objects of the Trust u/s.13(1)(c).*
- 4.1 *The Ld. CIT(A) erred in failing to delete the addition which was made by the AO relying on the sworn statements recorded from Mrs. Grace Pauline Ezhilnila Ramamoorthy (Mrs. Grace) who was hostile to M/s. TFMSS since termination of her services in 2019 and Mr.Jebamalai Robinson, a sub-ordinate of Mrs.Grace in M/s.TFMSS even though the statements contained incorrect facts.*
- 4.2 *No opportunity of cross-examination of Mrs. Grace Pauline Ezhilnila Ramamoorthy (Mrs. Grace) and Mr.Jebamalai Robinson having been allowed to the appellant in spite of specific request, the statements lose their validity and the addition made on the basis of the same ought to have been deleted in full.*
- 5.1 *The Ld. CIT(A) erred in upholding the addition made by the AO by placing reliance on the biased report of FDI Labs, as the same is not valid and does not hold any authority regarding the addition made in assessment.*
- 5.2 *The report of FDI Labs having nowhere been referred to or even considered by the AO, the Ld. CIT(A) erred in concluding that the AO made the addition on the basis of the same.*
- 5.3 *In any case, the Ld. CIT(A) failed to analyze the report of 'FDI Labs – A Unit of Indian Office Automation and Technologies Pvt Ltd.' in a prudent manner, as most of the observations in the report are based on presumptions, surmises, conjectures, fictitious, inaccurate and not relevant to the issue involved in appeal.*

- 5.4 *A copy of the report of FDI Labs having never been furnished to the appellant either by the Ld. CIT(A) or AO, the addition made on the basis of the same is liable to be deleted in full.*
6. *The Ld. CIT(A) failed to verify the context of Whatsapp chats from the mobile phone of Mr. Paul Dhinakaran as the same does not relate to the impugned addition made by the AO at all.*
7. *The Ld. CIT(A) erred in baselessly concluding that funds were taken for the benefit of Mr. Paul Dhinakaran and his family members in the absence of any evidence or examination.*
8. *The Ld. CIT(A) erred in directing the AO to disallow the portion of 'software usage charges' on an incorrect application of section 13(1)(c) of the Act.*
9. *Without prejudice to our grounds that the denial of expenses of Rs.48,07,552/- and addition of the same is incorrect, the Ld. CIT(A) erred in upholding the addition as the appellant is eligible for exemption u/s. 11 of the Act.*
10. *Any other grounds that may be raised at the time of hearing."*

3.1 The brief facts of the case are that the Assessee is a Public Charitable & Educational Trust registered u/s.12AA of the Act. It runs an educational institution by name 'Karunya Institute of Technology and Sciences' (KITS), which has been granted the status of 'Deemed to be University' by the University Grants Commission. Mr.Paul Dhinakaran is the Managing Trustee of the AssesseeTrustas well as an associate TrustM/s.Jesus Calls which is a religious and charitable Trust. There was a search u/s.132 of the Act on 20.01.2021 in the case of the Assessee and it's associate M/s.Jesus Calls. During the search various books of accounts, loose sheets / electronic devices found and seized.

4. The Assessee had used software named as 'Campus Management System' (CMS) developed by Dimensions Innovations Lab, Kerala in the early years of 2000 until 2012. The software malfunctioned in 2012 and stopped responding. The associate entity M/s.Jesus Calls also had many challenges in using its software which was also provided by Dimensions Innovations Lab, Kerala. Due to malfunctioning of CMS, a new software 'MyKarunya' for KITS and 'Family Card System' for Jesus Calls was developed by e-governance team of KITS headed by Mr.Jeys, a faculty member of Computer Science Department in the year 2013. Mr.Jeys left the organisation in March 2016 and migrated to Australia. Thereafter,

Assessee purchased an external software package from the market and installed the data in it, but the operation failed. The management of the Assessee as well as Jesus Calls took a decision to get the entire software developed, updated on regular basis and maintained by an outside company and hold them accountable instead of getting it done by internal staff and encounter frequent disruptions.

4.1 The assessee got the existing software studied by Tata Consultancy Services (TCS) and obtained quotes from TCS, Serosoft and True Friend Management Support Services Ltd (TFMSS). The evaluation committee consisting of three faculty members of KITS examined the features, technologies and deliverables offered by the products of the three companies and finally selected the software system by name 'Eduserve' offered by TFMSS which is backed up in terms of support, design, structure, planning etc., by PW Data Solutions, UK (PWDS) which is engaged in business consultancy and software development.

4.2 The e-governance team of KITS (consisting of two software developers and a business analyst) was dissolved and freshly employed by TFMSS in April 2016. Mrs.Grace Pauline Ramamurty (Smt. Grace) was appointed by TFMSS as Project Manager in September 2016. The strength of software developers was increased to five software developers and a business analyst. Through an agreement between TFMSS and PWDS, TFMSS was to develop the software as per the design, planning and structure provided by PWDS and maintain it for KITS and Jesus Calls. Eduserve software was registered in the name of PWDS with Registration Certificate Dept., UK on 30.01.2019.

4.3 PW Data Solutions (PWDS) is a company incorporated in UK by Mr. Timothy Jackson. He worked with KITS as Professor of Management from 1995 to 2003. Thereafter he migrated to UK and settled there since 2003. While in UK he did double Masters in EdTech and Data Research from University College of London and London Metropolitan University. He has about 20 years' experience in data analytics, data visualization, database design and implementation.

4.4 Services of Smt. Grace were terminated in June 2020 by TFMSS as PWDS threatened to move the outsourced work to some other company by giving 30 days' notice consequent to exchange of unpleasant mails by her. In her sworn deposition recorded during search, Smt. Grace deposed in response to few queries that the software 'Eduserve' and 'Peopleserve' were the renamed versions of old software 'MyKarunya' of KITS and 'Family Card System' of Jesus Calls. The software products were renamed while uploading the same on the Cloud in Microsoft Azure. She further stated that source codes of both old and new software products are similar with few modifications.

4.5 Smt. Grace admitted that Mr. Timothy Jackson of PWDS visited India from time to time for meetings. While in service with TFMSS, Smt. Grace used to address a number of mails to Mr. Timothy Jackson of PWDS regarding various issues arising on day-to-day development of software seeking and getting guidance. Statement of Mr. Jebamalai Robinson (Mr. Jebamalai), software developer of TFMSS was also recorded during search. In his statement, he was mainly confronted with the statement of Smt. Grace. In response, he confirmed whatever was deposed by Smt. Grace.

4.6 Smt. Yamini Prabha, Sr. Programmer of TFMSS stated that 'Eduserve' software was technically supported by PWDS support team and Mr. Timothy Jackson, UK. She deposed, after exit of Smt. Grace there was no technical support team in TFMSS and she directly interacted with PWDS support team through mail/google meet/google chat for day-to-day issues and with Mr. Timothy Jackson regarding coding/programming. She further elaborated and confirmed the support extended by the team from PWDS and Mr. Timothy Jackson.

4.7 The search party took backup of the systems in TFMSS, KITS, Jesus Calls and mobile phone of Mr Paul Dhinakaran, Managing Trustee, certain whatsapp chats from 01.02.2019 till date of search were extracted and used in the assessment orders and

appellate order of Id. CIT(A). A Digital Forensic Report (DFR) from a forensic expert was obtained by the DDIT(Inv.) and the same was referred by Assessing Officer (AO) in the assessment orders and Id.CIT(A) extensively reproduced the same in his orders.

5. In the assessment order, the AO had observed that assessee created an entire structure designed to intentionally divert Trust funds to a related foreign entity in the guise of software development expenses without actual service or business. According to him True Friend Management Support Services Pvt Ltd (TFMSS) was incorporated solely for separating software development, which was earlier done in house. TFMSS and PWDS, UK are related entities of Jesus Calls Group controlled directly or indirectly by Mr.Paul Dhinakaran. The TFMSS was used as a transit entity to move Trust money outside India for the benefit of Mr.Paul Dhinakaran and his family members. The AO further observed that PWDS which claimed to be the owner and master developer of 'Eduserve' and 'Peopleserve' software to the assesseeas well as Jesus Calls did not provide any training or guidance to the software team of TFMSS. The Software 'MyKarunya' of the assessee was renamed as 'Eduserve' and Family Card System of Jesus Calls was renamed as 'Peopleserve' without any significant change. With the above observations, the AO concluded that 'software charges' were paid to TFMSS merely based on agreements without actually rendering any services and held it is a sham transaction done to economically benefit the Trustee's individual or family interest and disallowed the entire claim of expenditure.

6.1 Aggrieved with the decision of the AO, the assessee assailed the order by way of appeal and the Id. CIT(A) substantively confirmed the disallowance made in the assessment order and granted part relief. While deciding the appeal, he relied on the statement of Smt.Grace, Mr. Jebamalai, Digital Forensic Report (DFR) obtained by the DDIT(Inv.) from a technical expert during post search proceedings and

Whatsapp chats exchanged by Mr. Paul Dhinakaran with others during the period 01.02.2019 to 19.01.2021 reproduced in the order, especially the following:

- a. *Chat dated 27.06.2019 – Mr. Jackson was asked to transfer \$ 20,000/- to IReach Global, USA in which Mr. Paul was a partner/Director.*
- b. *Chats dated 21.03.2019 & 22.03.2019 – Discussion on money from PWDS to the bank accounts of IReach Global, USA and Pears World Ltd etc. [Chats on page 77/CIT(A)]*
- c. *Chat dated 04.06.2019 – Mr. Jackson reported to Mr. Dhinakaran about transfer of money from TFMSS to PWDS and routing it to accounts of his entities. [Chat on page 80/CIT(A)]*
- d. *Chats dated 09.11.2020 to 28.11.2020 – discussion on buying shares of TFMSS and forming a Trust. [Chats on page 91-93/CIT(A)]*

6.2 Besides the above, the Id. CIT(A) relied on the Chase Bank account statement of Ms.Stella Ramola Dhinakaran, daughter of the Managing Trustee Mr.Paul Dhinakaran, collected while recording her statement during search on 22.01.2021. He relied on some entries referred in the bank statement and made the following observations:

- a. *Credits of \$ 3,743.87 each in her account with Chase Bank were received from PWDS on 01.05.2018 & 01.06.2018.*
- b. *After receipt of money into her Chase Bank account from PWDS, huge transfer of funds on regular basis as 'online payment to Capital One' was found.*
- c. *This proves flow of money from Assessee/Jesus Calls to TFMSS to PWDS and further to Mr. Dhinakaran and others through her account.*

6.3 After making the observations, the Id.CIT(A) concluded that there is no notable difference between old software (MyKarunya) and new software (Eduserve) other than using the Cloud services of Microsoft. Accordingly, he allowed the payments made for using Microsoft Azure Cloud service and salary paid to the software team proportionately between the Assessee and Jesus Calls. He disallowed the rest of the expenditure claimed u/s.13(1)(c) of the Act.

7. Aggrieved by the order of Id.CIT(A), the assessee is before the us with the present appeals.

8.1 Before us the Id.AR submitted a petition along with a 'Digital Forensic Analysis Report' (DFAR) requesting for admission of an additional evidence under rule 29 of Income Tax (Appellate Tribunal) Rules, 1963. The Id. AR explained the circumstances under which admission of additional evidence was absolutely essential. In the order of assessment, the AO (in para 8.6.17) referred to some forensic analysis which was never shared with the Assessee. After receiving the assessment order, Assessee specifically requested the AO vide letter dated 24.09.2024 to provide a copy of the forensic report relied upon by him. However, the same was not provided. In course of appeal proceedings also, the Assessee submitted the detailed written submissions before the Ld.CIT(A) stating that the aforesaid forensic report was not furnished. Neither the AO nor the Id.CIT(A) provided a copy of the said report. However, the Ld.CIT(A) extracted and relied upon the said forensic report extensively in the order. The assessee got aware of the contents of DFR for the first time only through the order of Id. CIT(A). After receipt of the order of Id. CIT(A), assessee requested the AO again vide letters dated 22.04.2025 and 05.05.2025 to provide a copy of the DFR used in the assessment order and appellate order but in vain.

8.2 The Ld.AR submitted a Digital Forensic Analysis Report (DFAR) obtained from a digital forensic expert based on data seized by the search parties, on the same issues dealt with in the DFR relied upon by theAO and Id.CIT(A). The assessee had no chance to submit this report (DFAR) at any earlier point of time. Therefore, he pleaded that it was just and necessary that this Tribunal admitted the additional evidence and take it on file in this appeal. He submitted that the non-filing of the DFAR before theAO and Id. CIT(A) was neither wilful nor wanton. He further submitted that if the above document was not admitted as an additional evidence, the Assessee would be put to great hardship and irreparable loss. The

assessee certified that the DFAR now submitted was given based on detailed examination and analysis of the digital data available on the record of AO having been copied/backed up and seized during the searches and provided to him by the AO during the course of assessment proceedings. Under the circumstances, Id. AR submitted that the DFAR may kindly be admitted as an additional evidence and render justice. The Id. AR furnished the evidence regarding filing a copy of the petition simultaneously along with DFAR to the Id. CIT - DR on 28.05.2025.

8.3 The Id. DR raised an objection regarding admission of an additional evidence and submitted that the same may be sent back to the AO for verification. Considering all the facts and circumstances, the DFAR submitted by the assessee is admitted as an additional evidence for the purpose of substantial cause in deciding the impugned appeals.

9.1 As part of his arguments, at the outset, Id. AR submitted that the decision of Id. CIT(A) was primarily based on incorrect facts, not adhering to the established principles of law, relying on the statements of deponents despite failure of the AO to provide cross-examination, ignoring the statement favourable to the assessee, strongly relying on the defective digital forensic report (DFR) relied upon by the AO, selective and incomplete consideration besides wrong interpretation of whatsapp chats between Mr. Paul Dhinakaran and others, incorrect facts adopted regarding entries found in Chase Bank account statement of Ms. Stella Dhinakaran, grossly ignoring the fair market value of services received and not taking evidence in the form of mails between Smt. Grace and Mr. Timothy Jackson of PWDS into consideration regarding the regular monitoring and guidance provided over the years.

9.2 The Id. AR further submitted that the Id. CIT(A) could not have confirmed the addition especially in unabated assessments in the absence of any incriminating material found or seized during the search. He clarified that no part of the evidence

relied upon by the AO and Id.CIT(A) could be called incriminating. For example, the agreements referred in the order are part of regular books, there is no Whatsapp Chat showing payment of software service charges without commensurate services, there is no chat showing diversion of money to Mr.Paul Dhinakaran or his family members or any entity in which they were interested, the whatsapp chats cannot be used as evidence without corroborative evidence, Chase Bank statement of Ms.Stella Dhinakaran didn't have any credits emanating from PWDS or any payments to Mr.PaulDhinakaran and his family. Hence, none of the evidence could be treated as incriminating.

9.3 The Id.AR argued that even after making additions/disallowances, exemption u/s.11 of the Act is available to the assessee on its gross income as the adjusted expenditure incurred was more than 85% of receipts.

9.4 The Id.AR argued that statements of Smt.Grace and Mr.Jebamalai could not have been relied upon by the AO and Id.CIT(A) considering that services of Mrs.Grace were terminated for deficiencies in her services and communications and she was hostile to the organisation. Mr.Jebamalai was her close aide. Moreover, it is patent from her statement that Mrs.Grace gave incorrect and evasive replies. In one of her responses, while confirming that Mr.Timothy Jackson of PWDS visited India from time to time for meetings, she stated that he visited TFMSS to say 'hello' which is factually incorrect as no one would visit India several times from UK to participate in meetings, just to say 'hello'. Moreover, seized data and record contains several mails exchanged between Smt.Grace to Mr.Timothy Jackson of PWDS seeking day-to-day guidance regarding development of software. The AO and Id.CIT(A) should have appreciated that no one living and settled in a foreign country would involve so closely in development and implementation of software of the assessee unless he was interested in such an assignment. He clarified that the assessee sought cross-examination of both Mrs.Grace and Mr.Jebamalai. The AO did not provide the same. In the remand report, the AO requested Id.CIT(A) to decide the issue on merits. If

the statement of Mrs.Grace cannot be considered as evidence, the statement of Mr.Jebamalai which is a commentary on her statement, cannot be relied upon keeping in view of the decision of Hon'ble Supreme Court in Andaman Timber Industries v. CCE [2015] 62 taxmann.com 3 (SC).

9.5 The Id. AR vehemently argued that theAO and Id.CIT(A) strongly relied upon the statements convenient to them even though no cross-examination was allowed, whereas they ignored the statement of Smt.Yamini Prabha, Senior software developer and in charge Project Manager after exit of Smt.Grace, just because it was not convenient to them to make the disallowance. He pointed out relevant excerpts from the statement of Smt.Yamini Prabha which was reproduced in the assessment order. She stated that 'Eduserve' software is technically supported by PWDS support team and Mr.Timothy Jackson, UK. She further stated, after exit of Smt.Grace there was no technical support team in TFMSS and she directly interacted with PWDS support team through mail/google meet/google chat for day-to-day issues and with Mr.Timothy Jackson regarding coding/programming and she elaborated the same in her next question to bring home the point that Mr.Timothy Jackson of PWDS and his team were not only hands on in development of software but also handholding the team of developers in TFMSS on regular basis. Moreover, the same team of PWDS provided training programs to TFMSS team during 31.07.2017 to 03.08.2017 at Coimbatore and 1 (one) day workshop at Microsoft campus in Bangalore on 09.01.2020. During the hearing, Id.AR filed copy of mails exchanged between Smt.Grace and Mr.Timothy Jackson regarding the training programs to substantiate his point that PWDS was fully involved not only in developing software but also in training developer team from TFMSS and maintaining it for the assessee and Jesus Calls.

9.6 The Id. AR also argued that until TFMSS and PWDS came into the picture for software development and maintenance, Cloud services were never used for using MyKarunya and Family Card System by the assessee and Jesus Calls respectively.

PWDS made an extensive study and analysis of MyKarunya and Family Card System and diagnosed serious flaws in the software as well as system issues causing frequent disruptions thereby unsatisfactory performance. Accordingly, PWDS came out with an idea of uploading the software in the Cloud services after initially making adequate improvements and modifications to match it with the requirements of the service provider Microsoft. Thus, PWDS played a pivotal role not only in giving the idea of using Cloud services but also making necessary modifications in the software and uploading it in the Cloud server of Microsoft Azure.

9.7 Ld.AR pointed out that the Digital Forensic Report (DFR) used by the AO and Id.CIT(A) in their orders was not shared with the assessee by both the authorities during the entire proceedings, in spite of specific requests. The author of the report did not mention anywhere about the material (data) provided and examined by him and the corresponding data relied upon for drawing each of the inferences mentioned. None of the inferences drawn were based on any verifiable evidence gathered during searches. Any forensic report should be based on verifiable facts and not opinions of the author. The DFR relied upon is more like fiction. The inferences mentioned in DFR are in the nature of opinions, assumptions, surmises, imaginary and cannot be relied upon. It is totally unlike a real fact based DFR and cannot be called a forensic report. Finally, he submitted that the DFR relied upon by the AO and Id.CIT(A) is factually incorrect and needs to be rejected summarily.

9.8 The Id. AR furnished a copy of Digital Forensic Analysis Report (DFAR) obtained by the assessee and submitted as additional evidence before us. He explained that the assessee engaged the services of an experienced 'Digital Forensic Expert' and got a DFAR made on objective examination and analysis of seized data. The DFAR submitted before us, is categorical that the software of Eduserve and People Serve is substantially different from MyKarunya and Family Card System. The DFAR gave a finding of fact based on scrutiny and analysis of seized data in 6 hard disks that the source codes, platform, architecture and language used in the new

software is substantially different from the old software. It categorically confirmed that substantial work was done in development and maintenance of new software involving huge professional effort. He also submitted that the findings given in the DFAR can be verified by any other independent expert and similar inferences would be drawn by him as adequate basis was given for every conclusion. He argued that the DFAR submitted by the assessee is fact based without leaving any scope for surmises or assumptions and needs to be taken into consideration while deciding the issue.

9.9 The Id. AR clarified the misconceptions of the AO and Id.CIT(A) regarding the Whatsapp chats between Mr.Paul Dhinakaran and Others specifically pointed out in their orders.

- a. *Chat dated 27.06.2019 (page 83/CIT(A)) – The Id. AR explained that the chat may be read with chats continued on dated 04.07.2019 and 02.09.2019 on the same subject. The final response from Mr. Dhinakaran was 'Let's wait Jackson'. It's only an academic discussion and was never given effect to. The conclusion drawn by Id. CIT(A) is baseless.*
- b. *Chats dated 21.03.2019 & 22.03.2019 (page 77/CIT(A)) – The Id. AR pointed out that the chat did not contain any discussion on PWDS. It is regarding Pears World LLC, USA and Pears World Ltd, Cyprus and not PWDS, UK. The facts relied upon are incorrect and are misrepresented in the order. Conclusion drawn by the Id. CIT(A) is factually incorrect and baseless.*
- c. *Chat dated 04.06.2019 (page 80/CIT(A)) -The Id. AR explained contents of the chat as given below:*
 - *The amount of Rs. 34 lakhs was remitted by TFMSS to M/s. Jerusalem Centre for Peace and Truth (JCPT) for the tour organised by it. Organising tours is the business activity of TFMSS and it collects charges from the client tourists. (Invoice and bank statement showing the remittance are enclosed at page no. 18 to 21/PB)*
 - *No payment of Rs. 70 lakhs was ever made.*
 - *The GBP 1,88,38,006/- (equivalent to about INR 163.89 cr) is an impossible figure in any combination of digits. No such payment was ever made nor intended to be made. There is a clear mistake in the conversation.*

d. Chats dated 09.11.2020 to 28.11.2020 (page 91 & 92/CIT(A) – The Id. AR submitted that it was discussion about restructuring operations of TFMSS and make each division accountable, more so after seeing the developments post termination of services of Smt. Grace.

The Id. AR further submitted that the inferences drawn by the Id.CIT(A) did not flow from any of the chats.

9.10 The Id.AR addressed another misrepresentation of facts and wrong inferences drawn by Id.CIT(A) based on the Chase Bank statement of Ms.Stella Ramola Dhinakaran gathered during the search and clarified as under:

- On verification of bank account statement of Ms.Stella Ramola Dhinakaran with Chase Bank (page nos. 56 to 59 /PB), it may be seen that the credits were received from Pears World LLC, an entity registered in USA and nothing has gone from PWDS, UK. Further, Id. CIT(A) reproduced the above Chase Bank statement (Q. No. 25/page 102/CIT(A)) and recorded the credits as received from Pears World Ltd, whereas the credits were actually received from Pears World LLC. Thus, the Id. CIT committed multiple errors and drew wrong inferences based on incorrect facts.

The Ld. AR further pointed out that the Id.CIT(A) made an erratic and false observation supposed to be based on the above account statement of Chase Bank account. The Ld.CIT(A) observed[page 105/CIT(A)] that after receipt of huge transfer of funds from PWDS into her account, money was transferred as 'Online payments to Capital One' (page nos. 60 to 61 /PB) on regular basis.Thus, the Id.CIT(A) concluded that the account was used as a conduit to facilitate transfer of money from PWDS to other accounts of Mr.Paul Dhinakaran, his family members and other concerns.

In this regard, the Id. AR again clarified that none of the credits in the Chase Bank account of Ms.Stella Dhinakaran was received from PWDS. The 'Online payments to Capital One' were the payments made to the credit card company as could be seen from the bank statement. None of the payments made through the account went to

accounts of Mr.Paul Dhinakaran, his family members and other concerns. On the contrary, some of the credits in the account were received from Mr.Paul Dhinakaran and Ms.Sharon Dhinakaran. The Ld.AR emphatically argued that neither the credits were received into her account from PWDS, UK nor was it transferred to the accounts of Mr.Paul Dhinakaran and others. The entire allegation is false and contrary to facts. The inference drawn by the Id.CIT is perverse, factually incorrect and needs to be rejected.

9.11 The Id. AR further argued, it is a fact that the assessee received software and maintenance services from TFMSS which was confirmed in all the sworn statements recorded and FDI report used in the orders of AO and Id.CIT(A). But for receiving such services, the whole system would have collapsed and could not have run for 5 years (2016 to 2021) till the date of search and thereafter. The Id.CIT(A) admitted that software services were received by the assessee from TFMSS and hence, allowed some part of payments/claims like salaries paid to the software team of TFMSS and charges incurred for uploading and using the Cloud services of Microsoft Azure by TFMSS or PWDS as the case may be.

9.12 In case the AO/ Id.CIT(A) found the expenditure claimed was excessive or unreasonable compared to the fair market value (FMV), the only option available in the Act is to consider invoking provisions of section 40A(2) of the Act and restrict it to FMV instead of arbitrarily disallowing the whole claim. In the orders, neither the AO nor Id.CIT(A) brought on record or considered the FMV of similar services in the market. None of them indicated as regards how assessee and TFMSS are related parties within the scope of clause (b) of section 40A(2) of the Act, even though they made casual remarks stating so.

9.13 The Ld.AR further elaborated stating that section 40A(2) of the Act is applicable to payments made to related parties mentioned in clause (b) to the said section. TFMSS is not a related party within the definition of clause (b) of section

40A(2).The payments for software services made to TFMSS were favorably comparable to the rates of any software provider in the market for comparable services. The same was examined by the selection committee before selecting TFMSS as service provider and allotting the work, based on quotes obtained from TCS, Serosoft and TFMSS. He submitted that when a product was acquired from the market for a comparable price (FMV), AO cannot sit in judgement and allow only cost incurred by the service provider and disallow the rest. Ld. CIT(A) cannot dictate the assessee to get the work done by the same defunct and inefficient team and face all the challenges from time to time defeating the very purpose of engaging an external service provider who could be held accountable. The fact is that the software development and maintenance work was outsourced to an external entity due to frequent disruptions and challenges faced by the Trust management in handling day-to-day operations. The Act does not provide for restrictions on claims as imposed by the Id.CIT(A).The Ld.AR finally requested to allow the entire expenditure claimed as the same was incurred genuinely for the services received considering that the transactions were done at arm's length.

11. Per contra, the Id. DR relied upon the orders of the lower authorities. He requested that the 'Digital Forensic Analysis Report' (DFAR) submitted by the assessee as additional evidence before the Tribunal be referred to the AO.

12. We have heard the rival submissions perused the materials available on record and gone through the orders of the authorities along with judicial precedents relied on. During the course of hearing the Id. AR submitted a paperbook containing 80 pages and copy of other material furnished during the hearing. The Ground 1 is general in nature and does not require adjudication. Grounds 2 and 9 are legal in nature. These legal grounds are discussed after deciding the other grounds on merits. In grounds 3 to 8 of the grounds of appeal, the assessee challenged the merits regarding disallowance of charges paid for software development and maintenance. The issues to be decided in these grounds of appeal of the assessee

for A.Y 2017-18 are regarding whether the entity True Friend Management Support Services Ltd (TFMSS) had provided substantive services for software development and maintenance to the assessee, payments made were for genuine services received, payments were made at FMV and the transaction was done at arm's length. The other issue to be seen is whether any of the payments made towards software charges by the assessee and Jesus Calls to TFMSS had flown to the accounts of the Managing Trustee of the assessee and Jesus Calls Mr.Paul Dhinakaran, his family members or his entities through PWDS, UK.

13.1 We find that the AO has observed that the assessee created a mechanism to intentionally divert Trust funds to a related foreign entity in the guise of software development charges without actual services. The AO meant the 'related foreign entity' to be PW Data Solutions (PWDS), UK incorporated by Mr.Timothy Jackson. Mr.Timothy Jackson is reportedly worked as Professor of Management in Karunya Institute of Technology (KITS) run by the assessee from 1995 to 2003. He immigrated to UK in 2003 and permanently settled there. He is known to Mr.Paul Dhinakaran, Managing Trustee of the assessee. This is the only connection between the assessee and Mr.Timothy Jackson as pointed out by the AO. During the searches and post search investigation by the DDIT(Inv.) and AO, no evidence was gathered and brought on record to show that Mr.Timothy Jackson was economically benefited by the assessee or Jesus Calls or Mr.Paul Dhinakaran since he left KITS in 2003. The list of Trustees of the assessee Trust, Jesus Calls and shareholders and Directors of TFMSS was submitted to Id.CIT(A) as reproduced on page 10 of the impugned order. We have gone through the same and found that the name of Mr.Timothy Jackson did not figure in the entire list. Merely having an acquaintance with a person who had worked with the organisation nearly 2 decades ago do not make the persons 'related' within the meaning of the Act. The provisions of the Act are clear as regards who is a 'relative' and a 'related person'. Mr.Timothy Jackson and Mr.Paul Dhinakaran, assessee, Jesus Calls and TFMSS do not fall within the

definition of 'related party' or 'relative' under the Act. The issue regarding the other limb of AO's observation is dealt with in the later paragraphs.

13.2 The other finding of the AO is that the entities TFMSS, PWDS, UK being related entities of Jesus Calls group are controlled directly or indirectly by Mr.Paul Dhinakaran. As already held supra, Mr.Paul Dhinakaran, assessee and Jesus Calls are not related parties under the provisions of Act. The other conclusion of Mr.Paul Dhinakaran controlling all the entities is based on some whatsapp chats extracted from his seized mobile. This itself do not lead to the inference drawn by theAO that too when he is not a 'related person'. Even assuming that Mr.Paul Dhinakaran was actually controlling all the entities, still it would not make any difference in the absence of any law prohibiting it. Controlling multiple entities by one person, even though a related party is not in violation of any law and there is nothing wrong in doing so. In case of any inter entity transactions, it is the duty of the AO to ensure that the transactions are done at arm's length and the consideration exchanged is as per the fair market value (FMV) of similar products and services. If he finds the amount paid is excessive or unreasonable, he may restrict it to the FMV. Instead of following the due process of law, the AO made casual remarks which are not relevant to the issue under consideration.

13.3 The AO further observed that TFMSS was incorporated solely for separating software development, which was earlier done in-house. During the hearing, the Id. AR took us through page 55 of the paperbook which is a summary of income, expenditure and profit of TFMSS from AY 2017-18 to 2021-22. He pointed out that during AY 2017-18, receipts of TFMSS from other activities such as organising tours, providing matrimony services, running a family TV channel etc., were Rs.872.05 lakhs whereas receipts from software development and maintenance were a mere Rs.51 lakhs, which is 5.52% of total receipts. Similar is the picture in other years with some variations in proportion of receipts from different activities. Hence, we find that the observation of the AO is factually incorrect.

13.4 Another observation of the AO was that Mr. Timothy Jackson or his team from PWDS did not provide training or guidance to the software team of TFMSS. During the hearing, Id. AR filed sample copy of mails addressed by Smt. Grace, Project Manager of TFMSS to Mr. Timothy Jackson of PWDS and his response mails. In the mail dated 28.07.2017 she confirmed the training for 4 days from 31.07.2017 to 03.08.2017 in Coimbatore and sought his guidance regarding the arrangements. In the mail dated 21.12.2019 addressed to Smt. Grace, Mr. Timothy Jackson confirmed arranging 1 day workshop on Azure databases on 09.01.2020 at Microsoft Bangalore Campus. The Ld. AR submitted that there are a large number of such emails exchanged between Smt. Grace and Mr. Timothy Jackson of PWDS regarding various aspects of software development and maintenance and included some mail copies randomly at page 22 to 53 to demonstrate involvement, supervision and guidance by Mr. Timothy Jackson of PWDS and his team. All these mails were reportedly extracted from the seized laptop used by Smt. Grace before her termination from TFMSS. Even though the entire data was before the AO, neither he nor the Id. CIT(A) took cognisance of existence of any such mails. Therefore, we find that the observation made by the AO is found to be contrary to the facts on record.

13.5 Further, the AO also observed that TFMSS was used as a transit entity to move Trust funds outside India for the benefit of Mr. Paul Dhinakaran and his family members. It is seen that in the entire assessment order, not even one instance of flow of Trust money to Mr. Paul Dhinakaran and his family members through TFMSS was brought on record except raising some doubts and suspicions. Hence, we are of the view that the said observation also found to be factually incorrect.

13.6 The AO alleged that software charges were paid by the assessee to TFMSS merely on agreements without any services and the transaction was sham and done to economically benefit Trustee's individual or family interest. It is a fact that all

software and online activities of the assessee and Jesus Calls have been functional since 2017 till the date of search. It is common knowledge that no software of any organisation can run normally without regular maintenance. It is an undisputed fact that the software team of TFMSS has been providing maintenance services on regular basis besides uploading the software in Microsoft Azure Cloud. Therefore, all this would not be possible without any services being received. Even though the AO's observation is prima facie contrary to the facts on record, the Id.CIT(A) appreciated the fact of receiving services from TFMSS and allowed a part of the service charges incurred by the assessee.

14.1 While substantively confirming the disallowance made in the assessment order, Id. CIT(A) relied on the statements of Smt.Grace, Ex-Project Manager and Mr.Jebamalai, software developer of TFMSS. When the assessee objected to use their statements as evidence considering that no opportunity of cross-examination was allowed, Id.CIT(A) held that even if statement of Smt. Grace is not taken into account, statement of Mr.Jebamalai still holds good as an independent statement on account of findings during the search. It is to be seen that there is no selective exception to use the statements when both of them are on the same footing. It is also an admitted fact that assessee wanted to cross-examine both of them, the Id. CIT(A) gave a direction to the AO to provide cross-examination of both the witnesses. The AO furnished a remand report expressing his inability to provide the same and requested the Id. CIT(A) to decide the issue on merits. However, Id. CIT(A) picked up some responses selectively from the statements of Smt.Grace [page 34 to 39 of order of CIT(A)]and Mr. Jebamalai [page 39 to 48 of order of CIT(A)]to hold that except maintenance of earlier software there was no development of software besides change of name. Under these circumstances, we hold that there is no discretion available to the Id. CIT(A) under the law to consider even one or some parts of the statements and use it as evidence to draw adverse inferences against the assessee and such inferences are to be ignored for all purposes.

14.2 We have also considered the statements of Smt.Grace and Mr.Jebamalaias reproduced in the assessment order and order of Id. CIT(A) on merits. It is an admitted fact that services of Smt.Grace were terminated from TFMSS during June 2020 and since then she was apparently hostile to TFMSS and to Mr.Timothy Jackson. In some of the responses, she was clearly evasive, indifferent and stated only half truths. For example, her response to Q. No. 47 [page 37 of order of CIT(A)] reflects her approach. The question and answer are reproduced below:

"Q.No. 47: Did any employee from PWDS, London, UK travel to India to train your team in TFMSS Pvt. Ltd?"

Ans. 47: No. As far as I know, there is only one employee in PWDS who is Mr. Timothy Jackson. Time to time, he visits India for meetings. So, he drops by to TFMSS at Karunya campus to say "Hello".

While confirming that Mr.Timothy Jackson of PWDS, UK visited TFMSS several times, she claimed such visits were only to say 'hello'. No one from UK would visit Coimbatore spending so much time and money to just say 'hello' to her. She maintained silence regarding the training given by PWDS, even though she exchanged Emails with Mr.Timothy Jackson regarding the trainings provided (para 13.4 supra). For example, in her Email dated 28.07.2017 she categorically confirmed the training for 4 days from 31.07.2017 to 03.08.2017 at Coimbatore and sought his guidance regarding the arrangements. In the Email dated 21.12.2019 addressed to Smt.Grace, Mr.Timothy Jackson confirmed arranging 1 day workshop on Azure databases on 09.01.2020 at Microsoft Bangalore Campus. In another Email dated 14.01.2019 addressed to Smt.Grace, Mr.Timothy Jackson gave his tour programme to visit KITS for 3 days from 21.01.2019 to 24.01.2019 to have several meetings with Chancellor, Registrar of KIT, JCI and TFMSS to co-ordinate the overall activities regarding software development and maintenance. We also note that he had scheduled a review meeting with Smt.Grace on 21.01.2019 at 11 AM. It is further observed that these are only a few select Emails out of a pile of such

Emails extracted from the laptop used by Smt.Grace before her termination from TFMSS.

14.3 Our attention was drawn to some such Emails extracted on random basis and placed in the paperbook at page no. 22 to 53 for our perusal. Our attention was specifically drawn to the Emails containing references to skype video calls they had besides a number of telephonic conversations. Smt.Grace was totally silent on the day-to-day Emails exchanged, video and audio calls she had with Mr.Timothy Jackson seeking his guidance and supervision regarding software development and maintenance. We find that unless Mr.Timothy Jackson and his team were fully involved in all aspects of the project like owning, creating a detailed structure, design, technology, platform, language and source codes for the software Eduserve and Peopleserve, he would not make such intense efforts to train, guide, supervise and review the work of Project Manager and her team on regular basis. This obviously was done by Mr.Timothy Jackson of PWDS, UK as he had financial interest in providing software services through TFMSS as per the agreements referred in the assessment and appellate orders. It is clear from the above that Smt.Grace suppressed some vital information and gave misleading responses in her statement and as such, her statement does not hold good as evidence against the assessee and hard to be relied upon.

14.4 From the statement of Mr.Jebamalai, we find unusual way of recording it. It is seen that major part of his statement contained queries seeking comments on the statement of his immediate boss,Smt.Grace. We note that he confirmed whatever she had deposed. It is further noted (page 17 of the assessment order) that Mr.Jebamalai having 13 years work experience was a software developer drawing a salary of Rs.33,000/- per month (about Rs. 4 lakhs per annum) whereas reportedly most of the students of KIT get placed while in final year of their course at an average pay of Rs.5.00 lakhs per annum in the campus recruitments conducted by various companies, proves that he is in the lower category in the hierarchy of an entity providing software services. He was not supposed to do any act beyond the scope of his duties.

14.5 As discussed above, we are of the considered view that the statements of Smt.Grace and her immediate sub-ordinate Mr.Jebamalai do not hold good as valid evidence against assessee not only on the settled principles of law but also on merits.

15.1 We have gone through the statement recorded from Smt.Yamini Prabha, Senior software developer in TFMSS who is next to Project Manager Smt.Grace. It is seen that after exit of Smt.Grace, she was given charge of her role. We note that the relevant responses from her statement were reproduced in para 8.6.14 on pages 30 & 31 of the assessment order. However, we find that both assessment orders as well as appellate order are silent as regard to the relevance or otherwise of her statement and why the same was not taken cognizance in the proceedings. In our opinion, if the AO and Id.CIT(A) considered it as not reliable, having brought the statement on record they should have discussed the reasons for rejecting it as admissible evidence. As discussed supra and argued by Id. AR, her statement is categorical in confirming the active involvement, knowledge, guidance and supervision of Mr.Timothy Jackson and his team from PWDS in the software development and maintenance services provided to TFMSS regarding Eduserve and Peopleserve. There is no contra material on record to controvert whatever was deposed by her. Hence, statement of Smt.Yamini Prabha, Sr.Software Developer is accepted as valid evidence reinforcing the assessee's claim of receiving genuine services from TFMSS and PWDS regarding Eduserve and Peopleserve.

15.2 It is an admitted fact that the assessee had used software named as Campus Management System (CMS) developed by Dimensions Innovations Lab, Kerala since the early years of 2000 until 2012. The software malfunctioned in 2012 and MyKarunya & Peopleserve were developed by e-governance team of KITS in 2013 for the assessee and Jesus Calls. Smt.Grace, ex-Project Manager of TFMSS was on record stating [Q.No.36 on page 36 of order of CIT(A)] that MyKarunya was very similar to CMS. She also deposed that the same software 'MyKarunya' was renamed as Eduserve and no development work was done until her exit in June 2020. The lower authorities relied upon her version and got a digital forensic report in

conformity with her view. We find that the same CMS software was being used over last 2 decades with some maintenance and without any further development which is highly improbable and hence the stand of lower authorities cannot be accepted as correct. It is common knowledge that software is never static, constantly changing fast and becomes obsolete in every few years unless it was further developed or modified to keep pace with the changing needs of the market. Hence, no organisation can be successful unless its software was developed abreast with its growing requirements. There are many huge organisations, which were highly successful at one time and suddenly disappeared from the market just because they did not update or modify and improve their software, failed to anticipate and failed to meet the growing requirements. It is seen that the assessee is highly successful and grew multifold in the last 2 decades. Its requirements have changed commensurately over the years with the expectations of stakeholders and the software also had to be changed in terms of technology, structure, language, features etc. In our opinion, this fact prima facie shows that the software was updated regularly over the last 2 decades, which was possible only by regular development, updating, adaptation to new technology and maintenance.

16. We have noticed that AO and Id.CIT(A) ignored the huge, seized data regarding Emails exchanged between Smt.Grace and Mr.Timothy Jackson. The Emails categorically establish the ownership, guidance, supervision and constant review of the software work being done in TFMSS, by Mr.Timothy Jackson of PWDS, UK. Similarly, they ignored the statement of Smt.Yamini Prabha, Sr. Software Developer in which she categorically confirmed the role of Mr.Timothy Jackson and his team in PWDS, UK in providing continuous guidance and monitoring development of Eduserve software. No valid reason has been given in both the orders as regards why they had to ignore such relevant and crucial evidence. In this factual matrix we observed that the revenue had relied on the unreliable statements, invalid and irrelevant evidence and conducted the proceedings. It is pertinent to note that in the 'Digital Forensic Report' (DFR) furnished by an expert,

there was absolutely no reference or mention to the huge seized Email data and comments there on even though it was a part of data seized during searches.

17.1 Coming to the 'Digital Forensic Report' (DFR), we find that the AO relied upon it and referred in para 8.6.17 on page 32 of the assessment order. Whereas the Id. CIT(A) substantially relied on it and reproduced the same in his appellate order at page 49 to 65. It is noted that the purported report was prepared by an organisation by name FDI Labs and submitted to DDIT(Inv.), Unit – 3(4), Chennai on 26.07.2021. The letter does not state any reference regarding the authority who ordered/directed such study and under whose authority. We have gone through the correspondence the assessee had with AO seeking copy of the DFR and taken note that the DFR was never shared with the assessee. Even after receipt of the order of Id. CIT(A), the copy of DFR was not shared despite of specific requests by the assessee.

17.2 We have gone through the DFR relied upon by the Id. CIT(A) vis-a-vis the arguments of Id. AR in this regard. The DFR does not contain particulars of data, if any provided to FDI Labs for examination and analysis and hence the purported DFR is a self-serving document prepared at the instruction of revenue. The DFR also does not contain any information regarding the data which was examined by them and the interviews & interrogations mentioned in the report and considered while giving the report. Even though there were repeated references to interviews and interrogations in the report, nowhere it was mentioned who were the persons interviewed/interrogated, and by whom? Against any of the inferences drawn in the report, no basis was mentioned.

17.3 The objective of carrying out the study is given on page 54 of the order of Id. CIT(A). It is to identify and prove tax evasion done by Jesus Calls Trust and its group entities, identify and prove distribution of entities, to prove all entities are run by one single entity, to prove data breach and leakage, to prove governance risk and to prove international tax evasion. Therefore, we are unable to understand how a forensic examiner can prove tax evasion and other objectives. Infact the DFR job supposed to find relevant facts from the data provided to him which may point out

needle of suspicion and provide such facts to the investigating officer to enable to investigate further in proving the tax evasion. We note that the income of the assessee and Jesus Calls is exempt u/s.11 of the Act over last decades, having obtained registration u/s.12AA of the Act. Therefore, when the income of the primary entities is already exempt from tax and there is no reason for apprehending tax evasion.

17.4 We find some of the inferences to be imaginary and irrelevant. One such inference is taken as an example. Clause III on page 55 of order of CIT(A) contained the following:

"Key management is driven by Timothy Jackson former Karunya University senior professor who are identified as reliable sponsored to get immigrated to foreign countries. Interviews and interrogations as part of interviews shows senior professors who worked in India were immigrated to Australia, US, UK and many other countries. Mr. Timothy Jackson is one among who worked as senior professors in India migrated to London for the mission of setting up PWDS business centre and heading the same now."

In clause I on the same page, it is mentioned 'PWDS established & active from 2015'. It is alleged that Mr. Timothy Jackson was migrated to London for setting up PWDS in 2015. It is a fact on record [para 5 on page 9 of order of CIT(A)] that Mr. Timothy Jackson worked in KITS from 1995 to 2003. He left KITS in 2003 and settled in UK and did double Masters in Ed Tech and Data Research there. The forensic expert meant that he was migrated to London in 2003 and waited there for fulfilling the mission to set up PWDS in 2015 i.e 12 years later. In our considered opinion it is a prima facie absurd, irrelevant and baseless inference. Similar allegation was made about some other unnamed senior professors who worked with KITS. If they were immigrated to foreign countries by Mr. Paul Dhinakaran to suit his business interest, he must be paying them salary or remuneration over these years. During extensive searches conducted by the Department, the authorised officers with the help of computer experts scrutinised all kinds of available data pertaining to several years. No finding was given in any order regarding any payments made to the ex-faculty members who were supposed to have been immigrated to foreign countries at the instance of Mr. Paul Dhinakaran.

17.5 We have also observed another inference drawn in the DFR under clause XII on page 57 of the order of Id. CIT(A), it is mentioned as –

"One entity Jesus Calls has been disintegrated into PW Data Solutions (PWDS), True Friend Management Support Service (TFMSS), Karunya Institute of Technology and Sciences (KITS) for the purpose of expense distribution for the benefit of tax enjoyment."

The comments made therein DFR are not only factually incorrect but also absurd. The forensic examiner passed the comments without any sense of responsibility though both Jesus Calls and KITS have been enjoying tax exemption in respect of their income over the last several decades. Already they have been enjoying tax benefit and wouldn't enjoy any other tax benefit by disintegrating and setting up new entities. TFMSS was registered as a company independently. It has been offering considerable income in its returns (page 55 of paperbook), PWDS was established in UK and not in India. KITS was established in 1986 independently as an educational Trust and not set up by splitting or disintegrating Jesus Calls which is a religious Trust. There is no basis given regarding the other entities.

17.6 All the other observations made in the DFR are found to be imaginary, arbitrary, irrelevant and baseless opinions going to the extent of wild allegations. Such observations include the ones made on source code of MyKarunya vis-à-vis Eduserve and all other issues dealt with in the report. Having gone through the DFR carefully, we find that the report suffers from grave deficiencies and cannot be considered as valid evidence against the assessee. It does not come to the rescue of lower authorities to lend any support to the disallowance made in their orders.

17.7 Coming to the 'Digital Forensic Analysis Report' (DFAR) submitted by the assessee as additional evidence, it is seen that the report is prima facie fact based and for every conclusion drawn, the forensic expert has given details of data examined and the circumstances under which the conclusion was drawn. It contained the number of modifications carried out in each module and table in each year and the name of developers who made the changes and number of additions & modifications done yearwise. We find that the report is apparently reliable. The report is categorical that the source codes used for MyKarunya and Eduserve are

entirely different, technology and platform used by Eduserve are much advanced with additional features. This was in addition to the extensive changes made in the software to make it suitable to upload it in Cloud through Microsoft Azure Cloud services. It is also categorical regarding the extensive improvements and additional features to the extent of 30 to 40% per year carried out in the software. Even though, the DFAR disproves the DFR and the decision of AO and Id.CIT(A), the same is not taken into consideration keeping the request of Id. DR to refer it to the AO. We have already held that the DFR used by the lower authorities is not tenable in the eyes of law and hence does not support the disallowance made in the orders. Moreover, the DFR cannot be taken into consideration as the same was not mandatorily furnished with the assessee at any stage of the proceedings necessitating the assessee to obtain and furnish additional evidence in the form of DFAR. Having failed to furnish the DFR at two stages by the lower authorities, we are not inclined to give a second innings and fresh lease of life by referring DFAR to AO. As decided supra, the DFR is considered as invalid evidence and rejected. Consequently, there is no need for the assessee to separately rely on DFAR and its consideration or otherwise is only academic. Even if the DFAR was considered or not considered, it would not make any difference to the issue under consideration and remanding it to the AO will not serve any useful purpose. Therefore, we refrain from remanding back to the AO as prayed by the Id.DR.

18. We have gone through the 'whatsapp chats' reproduced in the order of Id. CIT(A), conclusions drawn based on such chats with special reference to 4 chats (page 95 & 96 of the order of CIT(A)), written submissions and the arguments of the Id. AR as mentioned in para 9.9 supra. After careful examination of the chats, we find that the conclusions drawn by the Id. CIT(A) are factually incorrect and do not flow from the facts considered by him, as pointed out by the Id. AR. We agree with the submissions and arguments of Id. AR. These chats do not advance the decision of lower authorities.

19. We have examined bank statements of Ms.Stella Ramola Dhinakaran maintained with Chase Bank, observations & conclusions of CIT(A) (pages 95, 102

& 105 of the appellate order), written submissions and arguments of Id. AR mentioned in para 9.10 supra. We find that the observations of Id.CIT(A) with reference to the facts mentioned by him are incorrect and the conclusions drawn on such observations are also incorrect and did not flow from the facts considered. As such, the very entries referred in bank statements counter the assumption of lower authorities that the account of Ms.Stella Ramola Dhinakaran was used as a vehicle to receive money from the assessee for further transfer to Mr.Paul Dhinakaran, his family members and entities. We find that no credits were received into the account from PWDS nor any payments or remittances or transfers were made to the accounts of Mr.Paul Dhinakaran, his family members or entities from such account. On the contrary, we find credits were being received frequently into the account from her father Mr.Paul Dhinakaran and sister Ms.SharonA.Dhinakaran. This fact goes against the presumptions of the lower authorities.

20. After countering the decision of lower authorities in each aspect, Id. AR explained the methodology adopted as regards how the software development work was entrusted to TFMSS and PWDS. The assessee got a study of the software conducted by a reputed company Tata Consultancy Services (TCS) which found grave defects (page 7 of paperbook) warranting a new software incorporating the core features existing in old software MyKarunya. For this purpose, quotations were obtained from TCS, Serosoft and TFMSS. The same were considered by a selection committee consisting of 3 members (minutes at page 1 to 4 of paperbook) who after detailed evaluation recommended TFMSS as service provider. In the process, not only the service provider was shortlisted but FMV of the product was also discovered. Considering all the circumstances, Eduserve development work was given to TFMSS at FMV. As mentioned in paras 9.11 and 9.12 supra, the Id.AR argued that the lower authorities do not have any discretion under the Act to alter the consideration paid for receiving genuine services as long as the transaction was done at arm's length, the parties are not related and the consideration was as per FMV. After considering all the facts and circumstances, we find that software services received were genuine and the consideration paid for such services was as

per FMV.As such, we do not allow interference with the claim made by the assessee in this regard.

21. After carefully considering all the facts available on record and the circumstances, we find that the lower authorities completely ignored and kept aside the relevant and crucial evidence in support of the claim made by the assessee. Such evidence included the sworn statement of Smt.Yamini Prabha, Sr.Software Developer, huge data of emails exchanged between Smt.Grace and Mr.Timothy Jackson regarding software development, taking cognisance of huge difference in the data on software of MyKarunya vis-à-vis Eduserve and the software development work done to make the same to match with the requirement of Microsoft Azure to upload it in the Cloud. On the contrary, they relied upon statements of unreliable witnesses without providing cross-examination, strongly relied upon unreliable and purported DFR, misinterpreted uncorroborated whatsapp chats, misrepresented entries in bank statements etc., to enable them somehow to disallow the claim. Having considered the relevant facts available on record in totality, we find that the lower authorities failed to lead appropriate evidence to sustain the disallowance. Hence, grounds 3 to 8 raised by the assessee challenging the disallowance of software charges for the A.Y. 2017-18 are allowed on merits by setting aside the order of the Id.CIT(A).

22. As the grounds raised are substantively allowed on merits, the legal grounds raised at number 2 and 9 are held as infructuous and do not require adjudication. In the result, disallowance made by the lower authorities is deleted and appeal of the assessee for AY 2017-18 is allowed.

ITA Nos. 800 to 803/CHNY/2025 for A.Ys. 2018-19 to 2021-22

23. It is seen that the remaining 4 appeals in ITA Nos. 800/CHNY/2025 to 803/CHNY/2025 for assessment years (A.Y) 2018-19 to 2021-22 respectively arise out of the orders dated 28.02.2025 passed by the Id. CIT(A), against the orders of assessment passed u/s.143(3) r.w.s 153A of the Income-tax Act, 1961 dated 31.03.2022 by the DCIT. The Id. CIT(A) passed a common order for all 5 assessment years 2017-18 to 2021-22 considering all the facts and circumstances to

be identical. For the same reason, we also held that the present order passed for AY 2017-18 is mutatis mutandis applicable to AY 2018-19 to 2021-22 also. Hence, appeals of the assessee for the A.Ys.2018-19 to 2021-22 are stand allowed.

ITA No.802/CHNY/2025 - AY 2020-21

24.1 The assessee filed additional grounds of appeal for AY 2020-21 and requested for admission of the same and adjudication. The grounds raised are mentioned below:

- i. The Id. CIT(A) erred in stating that there is no direct correlation to business consultancy charges paid and the international placement & research opportunities for the students of the Trust.*
- ii. The Id. CIT(A) failed to consider and appreciate the evidence furnished by the assessee with respect to the international promotion activities.*
- iii. The Id. CIT(A) erred in blatantly stating that the business consultancy charges are similar to that of software charges i.e to divert the funds outside the country, without any basis."*

24.2 The Id. AR submitted that an inadvertent error occurred on his part while finalizing the grounds of appeal and filing the appeals. From the appeal papers received, it was seen that the Ld.CIT(A) decided the appeal in AY 2017-18 by passing a detailed order and followed the same in other 4 assessment years. There are no other issues in the remaining assessment years except for A.Y. 2020-21. The grounds of appeal were finalised and filed under the mistaken impression that the issue decided by the Ld. CIT(A) in A.Y. 2017-18 was the sole issue in all assessment years. The mistake was noticed while preparing the case for arguments for the hearing fixed on 05.06.2025. Immediately after realising the mistake, the issue was raised before the Tribunal in the additional grounds of appeal for admission and consideration. He requested that the mistake occurred under bonafide circumstances. But for the admission of additional grounds, the assessee would be put to great hardship and irreparable loss. He requested for admission of the same and render justice. The Id. DR did not raise any objection for admission of the additional grounds.

24.3 We have considered the submissions of Id. AR. we find that filing of additional grounds was necessitated due to genuine mistake occurred at the time of filing appeals before the Tribunal. Considering the facts and circumstances, we admit the additional grounds raised by the assessee.

25.1 Brief facts of the case are that the assessee entered into a Business Consultancy Agreement with TFMSS on 01.07.2019 for a period of 1 year. As per the agreement, TFMSS was required to arrange collaboration with global universities, improvement of students' interpersonal skills to enable them participate in placement programs, arranging international conferences, faculties, placements, internships, participation in global conferences, brand building campaigns etc.

25.2 During A.Y. 2020-21, assessee incurred an expenditure of Rs.2.36 crores (page 54 of paperbook) under the Business Consultancy Agreement. It incurred an expenditure of Rs.4,36,19,608/- towards software charges. In the books of the assessee, due to mistake of the accountant, entry regarding Business Consultancy Charges of Rs.2.36 crores was also passed in the same account under the head 'software charges'. Thus, the claim of software charges appeared to be Rs.6,72,19,608/- instead of Rs.4,36,19,608/-. In the assessment order, AO disallowed the entire amount of Rs.6,72,19,608/- under software charges as was done in other years without any discussion about the business consultancy charges included therein.

25.3 Having realised the mistake, in the accounts for A.Y.2021-22, the Accountant opened a separate account under the head 'Business Consultancy Charges' and recorded the expenditure of Rs.2,95,00,000/- incurred in that year and claimed the same in Receipts and Payments account. The AO allowed the claim of Business Consultancy Charges and disallowed the software charges claimed as done in other years.

26. During the proceedings before Id.CIT(A), assessee furnished details of students who were benefited from such an agreement by means of securing international placements, students who were taken into foreign universities for carrying out

research work, student exchange programs etc., and requested for deleting the disallowance and allowing the claim. The Ld.CIT(A) confirmed the disallowance on the ground that the assessee did not provide direct correlation between the charges paid and international placement and research opportunities achieved by students of KITS with comparative data. The other reason given by Ld.CIT(A) is that TFMSS was floated to divert funds outside the country for the benefit of Mr.Paul Dhinakaran and his family members and payment of Business Consultancy Charges was also for the same purpose. He was of the opinion that Business Consultancy Charges was also similar to software development charges and confirmed the disallowance for the same reasons.

27.1 The Ld. AR submitted that before entering into the agreement, no foreign company visited KITS for campus recruitment and none of the students got opportunities to participate in global conferences and hardly any student was taken by foreign universities for carrying out research work except in stray cases in which a few students got opportunities due to their parents' connections and efforts. Such activities started from the assessee's side in an organised way only after the business consultancy agreement was entered into and promotion of KITS was commenced in a focused manner in international forums.

27.2 Further, the Ld. AR drew our attention to page 15 to 17 of the paperbook wherein data regarding number of collaborations entered into with foreign universities, MOUs signed with foreign universities and number of students placed in foreign companies during FY 2019-20 to 2023-24. The benefits started flowing in a modest way and growing better over the years.

27.3 He submitted that there cannot be any direct correlation between the expenditure incurred and the results achieved in arithmetical proportions in these activities. The achievements start flowing only after sustained promotions over the years. The assessee made a beginning in this regard.

27.4 The Ld. AR argued that the AO allowed the claim of Rs.2.95 crores incurred in A.Y.2021-22 towards business consultancy charges under identical circumstances. The Ld. CIT(A) also did not disturb the claim allowed by the AO. The disallowance

was made by theAO in AY 2020-21 without noticing that the claim of business consultancy charges was included in software charges by mistake.

27.5 He further argued that the comparison of the claim made towards software charges and business consultancy charges made by Id.CIT(A) is not appropriate as both activities operate in different fields. Even otherwise, elaborate submissions were made to establish that software charges were incurred for carrying out genuine development and maintenance work.

27.6 The Id. AR objected to the baseless allegation made by the Id. CIT(A) that TFMSS was floated by the assessee group to divert funds outside the country for the benefit of Mr.Paul Dhinakaran and his family. While arguing against similar allegation made by him in respect of software charges, the allegations were successfully disproved.

28. Per contra the Ld. DR relied on the orders of the lower authorities and prayed for confirming the disallowance.

29.1 We have heard the rival submissions and perused the materials available on record. All 3 additional grounds are regarding the disallowance of business consultancy charges of Rs.2.36 crores. It is seen that the AO had no occasion to apply his mind regarding the claim as the same got clubbed with the software charges. He disallowed it mechanically along with software charges without even realising that the claim of business consultancy charges was included in it.

29.2 We have noticed that Id.CIT(A) confirmed the disallowance in a mechanical manner without due application of mind. It is admitted in the order that in support of the claim, the assessee submitted the agreement and details of students who got benefited consequent to the agreement. If he was not satisfied with the details, he should have required the assessee to furnish details in the manner he intended. If the assessee failed to do so, it is open for him to decide the issue. The assessee discharged the onus cast on his part whereas Id. CIT(A) simply brushed it aside giving vague reasons. We have gone through page 15 to 17 of the paperbook wherein details of foreign universities with which the assessee entered into MOUs and collaboration agreements regarding student exchange programs and opening

research facilities to students. It also contained details of students who got placements in foreign companies. Even though the results achieved are modest, it appears a new beginning was made. Regarding the objection of Id.CIT(A) of no direct correlation with the results, we are inclined to agree with the submission of the Id. AR that there cannot be direct correlation between the expenditure incurred and the results achieved in arithmetical proportions in the same year in this kind of activities unlike in trading or manufacturing business. Another reason mentioned by Id. CIT(A) that TFMSS was created to divert funds outside the country for the benefit of Mr.Paul Dhinakaran and his family is nothing but his hypothesis and surmise. As discussed in the detailed order for A.Y.2017-18, we did not find even one instance of such diversion of Trust funds as alleged.

29.3 The Id.CIT(A) expressed his opinion that business consultancy charges paid to TFMSS was also similar to software charges is without any basis as no contrary evidence were brought in by the revenue. The disallowance of a claim merely on personal hypothesis does not have a place in law and every decision has to be backed up by appropriate evidence that too when a liability is fastened to the assessee. We have considered the argument of Id. AR that similar claim was made in A.Y. 2021-22 also. After due consideration, the AO allowed the same and the Id. CIT(A) also accepted it having not disturbed it even though the appeal for A.Y.2021-22 was decided by him. Hence, we do not find consistency in the approach of Id. CIT(A) in respect of the same issue in two successive years. After considering the facts and circumstances, we delete the disallowance of business consultancy charges claimed in AY 2020-21 by setting aside the order of the Id.CIT(A).

29.4 Thus, the disallowances made by the lower authorities are deleted and additional grounds raised by the assessee for AY 2020-21 are allowed.

30 In the result all the five appeals of the assessee for A.Ys. 2017-18 to 2021-22 are allowed.

Order pronounced in the open court on 7th day of July, 2025 at Chennai.

Sd/-

(एस.आर.रघुनाथा)

(S. R. RAGHUNATHA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai: दिनांक Dated : 07-07-2025

KB/-

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Assessee
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT-Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF