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T.C.A. No.761 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2025

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THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Tax Case Appeal No.761 of 2010

Commissioner of Income Tax,
Chennai.

.. Appellant

-VS-

Sahara Asset Management
Company Pvt. Ltd.,
Unit No.A & B, VIII Floor,
No.12 & 13, Riaz Garden,
29, Kodambakkam High Road,
Chennai 600 034.

.. Respondent

Prayer: Appeal filed under Section 260A of the Income Tax Act, 1961,
against the order dated 10.02.2010 passed in ITA No.950/Mds/2009 on the
file of Income Tax Appellate Tribunal, Madras 'A' Bench, for the Assessment
Year 2005-06.



T.C.A. No.761 of 2010

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For Appellant : Mr.T.Ravikumar
Sr. Standing Counsel

For Respondent : Mr.R.Meenakshi Sundaram

* * * * *

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The appeal was admitted on 09.08.2010 and the following substantial question of law was framed:

" Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in deleting the addition on account of Mutual Fund Promotion Expenditure and Initial Public Offer Expenditure when the expenses under reference have been incurred by the assessee purely for the purpose of business activities of another person?"

2. The assessee is an asset management company acting as fund manager, managing mutual fund schemes. For the Assessment Year 2005-06, assessee had claimed mutual fund promotion expenditure and initial public offer expenditure. The Assessing Officer held that the assessee company is a fund manager for the mutual fund company and the assessee



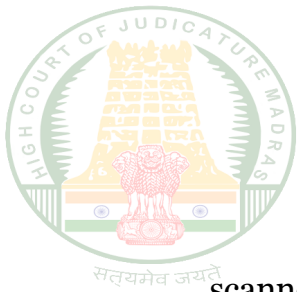
T.C.A. No.761 of 2010

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company need not have incurred mutual fund launch expenses and mutual fund promotion expenses. The Assessing Officer, consequently, disallowed the expenses incurred by the assessee and added the same to the total income.

3. Aggrieved by the assessment order, the assessee filed an appeal before the Commissioner of Income-tax (Appeals) [in short 'CIT-A']. The CIT (A) allowed the appeal following the decision of the Income Tax Appellate Tribunal dated 29.08.2008 in assessee's own case in ITA No. 987/Mds/2007. Aggrieved by the order of CIT (A), Revenue preferred an appeal before the Income Tax Appellate Tribunal (ITAT). The ITAT, by the impugned order dated 10.02.2010, relying upon its earlier decision dated 29.08.2008, dismissed the Revenue's appeal. It is against that order, this appeal under Section 260A of the Income Tax Act, 1961, has been filed.

4. To answer the substantial question of law, we have to consider why the ITAT, in its order dated 29.08.2008 for the Assessment Year 2003-04 allowed the appeal of the assessee. For that, it will be useful to reproduce the relevant portions of the order dated 29.08.2008 and they are



T.C.A. No.761 of 2010

scanned and reproduced below:

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Grounds No.3 and 4

3. That the learned CIT(A) is not justified in confirming the addition of Rs.26,38,776 on account of mutual fund launch expenses for growth fund scheme and Rs.1,61,61,088 on account of mutual fund promotion expenses.

4. That the learned CIT(A) is failed to appreciate that there are several instances where initial issue expenses for launch of a new scheme were borne by Asset Management Company e.g. UTI Thematic Fund launched in 2004.

8. During the assessment proceeding, it was noticed by the AO that the assessee had claimed expenses aggregating to Rs.1,87,99,864 as under.

S.No.	Particulars	Amount (Rs.)
1.	Mutual Fund Launch Expenses	26,38,776
2.	Mutual Fund Promotion Expenses	1,61,61,088



T.C.A. No.761 of 2010

5

I.T.A. No.987/Mds/2007

9. The AO disallowed the above expenses and his order was confirmed by the CIT(A). The assessee has challenged the order of CIT(A) in the present appeal.

10. Shri P.J.Pardiwala, the Id.AR reiterated the arguments which were put forward on behalf of the assessee before the AO and the CIT(A). The submissions made by him are summarized below.



- that the assessee was an Asset Management Company vide agreement dated 18.07.1996.
- that the expenses of Rs.26,38,776 and of Rs.1,61,61,088 were incurred by the assessee to meet the objects as stipulated in the tri-partite agreement dated 18.07.1996.
- that the said expenses, incurred by the assessee, were in accordance with the SEBI (Mutual Fund) Regulation, 1996
- that in consideration of the investment management services to be performed by the assessee- AMC, the Trustees, on behalf of the Mutual Fund were to pay to the assessee-AMC a fee at the rate prescribed in Schedule 2 to the said agreement dated 18.07.1996.
- that the initial issue expenses cannot exceed 6% of the funds raised under each scheme.
- that the accounts of the assessee-AMC were subject to review by the SEBI.
- that the said expenses were incurred by the assessee-AMC wholly and exclusively for the purposes of its business.
- that reliance was placed on the decisions in the following cases.



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6

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I.T.A. No.987/Mds/2007

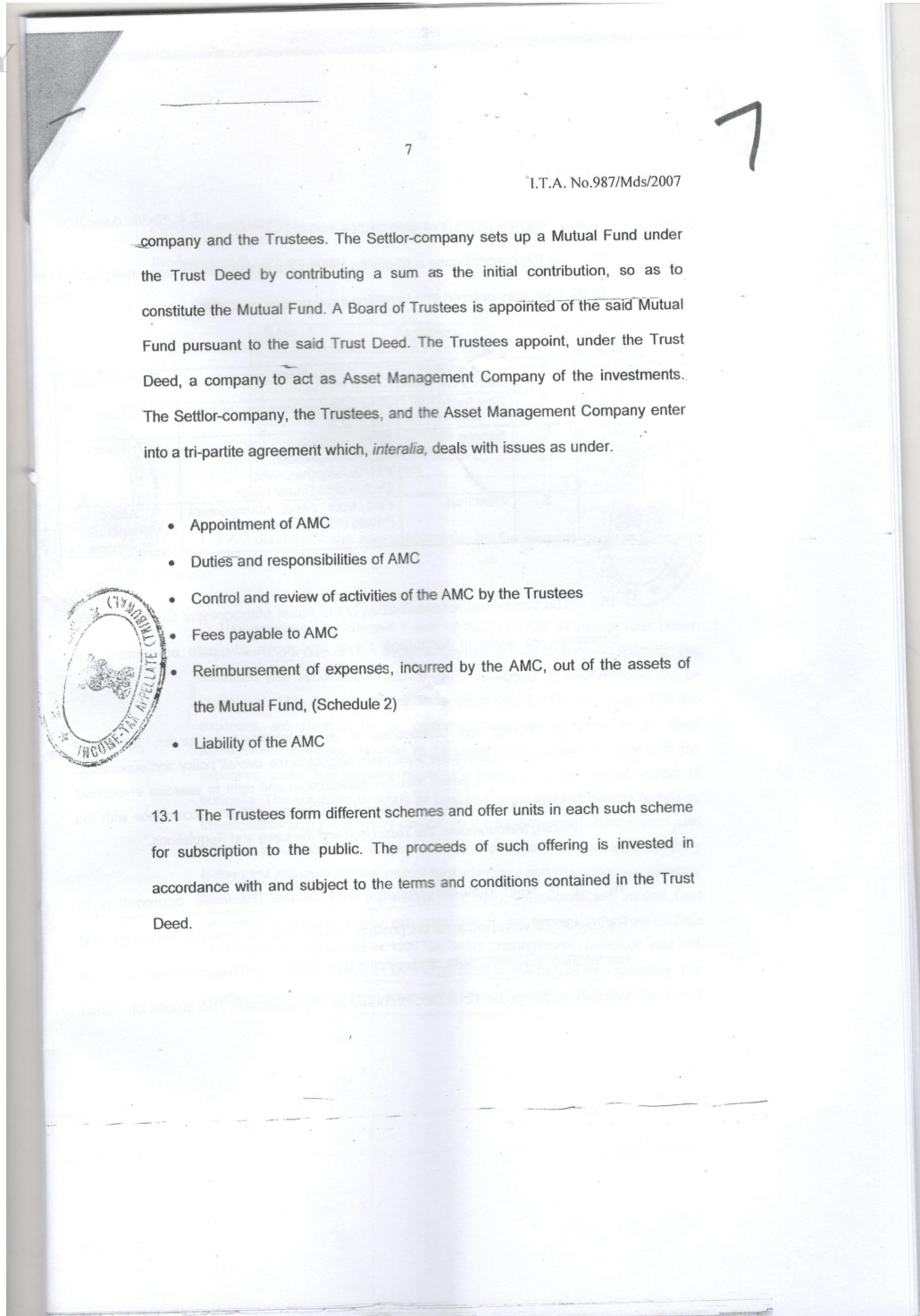


- (i) ACIT v. DSP Merrill Lynch Investment Managers Ltd. (2007) 15 SOT 639 (Mumbai)
- (ii) Birla Sunlife (AMC) Ltd. v. ACIT, Central Cir.I, Mumbai in ITA No.5980/Mum/2000, AY 1995-96 dated 04.06.2004.
- (iii) JCIT, Special Range -5, Mumbai v. M/s.Alliance Capital Asset Management (I) Pvt.Ltd. in ITA Nos.4180 & 4181/Mum/1999, AY 1996-97 and 1995-96 dated 12.04.2004
- (iv) M/s.GIC Asset Management Company Limited, Mumbai v. ACIT, Range 2(1), Mumbai in ITA No.479/Mum/2002, AY 1998-99 dated 29.09.2003.
- (v) SBI Funds Management P.Ltd. v. ACIT, Range 3(3), Mumbai in ITA No.4001/Mum/2002, AY 1997-98 dated 27.06.2007.

11. Shri Sunil Babu, the Id.DR supported the orders of the AO and the CIT(A). He vehemently argued saying that the order of the CIT(A) needed to be upheld. He placed reliance on the decision of the Madras High Court in the case of T. N. Power Finance and Infrastructure Development Corporation Ltd. v. Jt. CIT [2006] 280 ITR 491(Mad).

✓ 12. We have considered the rival submissions in the light of material on record and the precedents cited. Before proceeding further we like to look at the manner in which the business of a mutual fund is carried on – its business model, the parties involved, the legal frame work, rights, duties, and liabilities of the parties, the control and regulation of SEBI.

13. The business of a Mutual Fund, generally, involves three parties – a Settlor-company, a group of Trustees, and a company acting as Asset Management Company (AMC). There is a Trust Deed between the Settlor-





8

8

I.T.A. No.987/Mds/2007

14. In the present case a tri-partite investment management agreement dated 18.07.1996 was entered into involving three parties as under.

S.No.	Parties	Name	Referred to as
1.	First Part	First Leasing Company of India Ltd. (FLCI)	Settlor
2.	Second Part	Dr.A.C.Muthiah, Mr.A.C.Chakraborti Dr.D.Jayavarthanayalu Mr.Surendra Daulet Singh	Trustees
3.	Third Part	First India Asset Management Private Ltd. (the Assessee)	Asset Management Company



15. The duties and responsibilities of the Asset Management Company – the assessee, as given in paragraph (3) of the above tri-partite agreement are, *interalia*, as under.

"3.1. During the continuance of its appointment hereunder, the Asset Management Company shall have, subject to the overall policy and supervision of the Trustees, power and / or authorization and right to exercise investment management functions in relation to the Investments, in accordance with the Placing Memorandum, the Trust Deed and the Laws and Regulations."

16. It is seen that the Mutual Fund Launch Expenses aggregating to Rs.26,38,776 were incurred on postage, travel and conveyance, meetings and conference, advertisement, and printing and stationery. The details are given at page 79 of the paper book filed on behalf of the assessee. The details of Mutual



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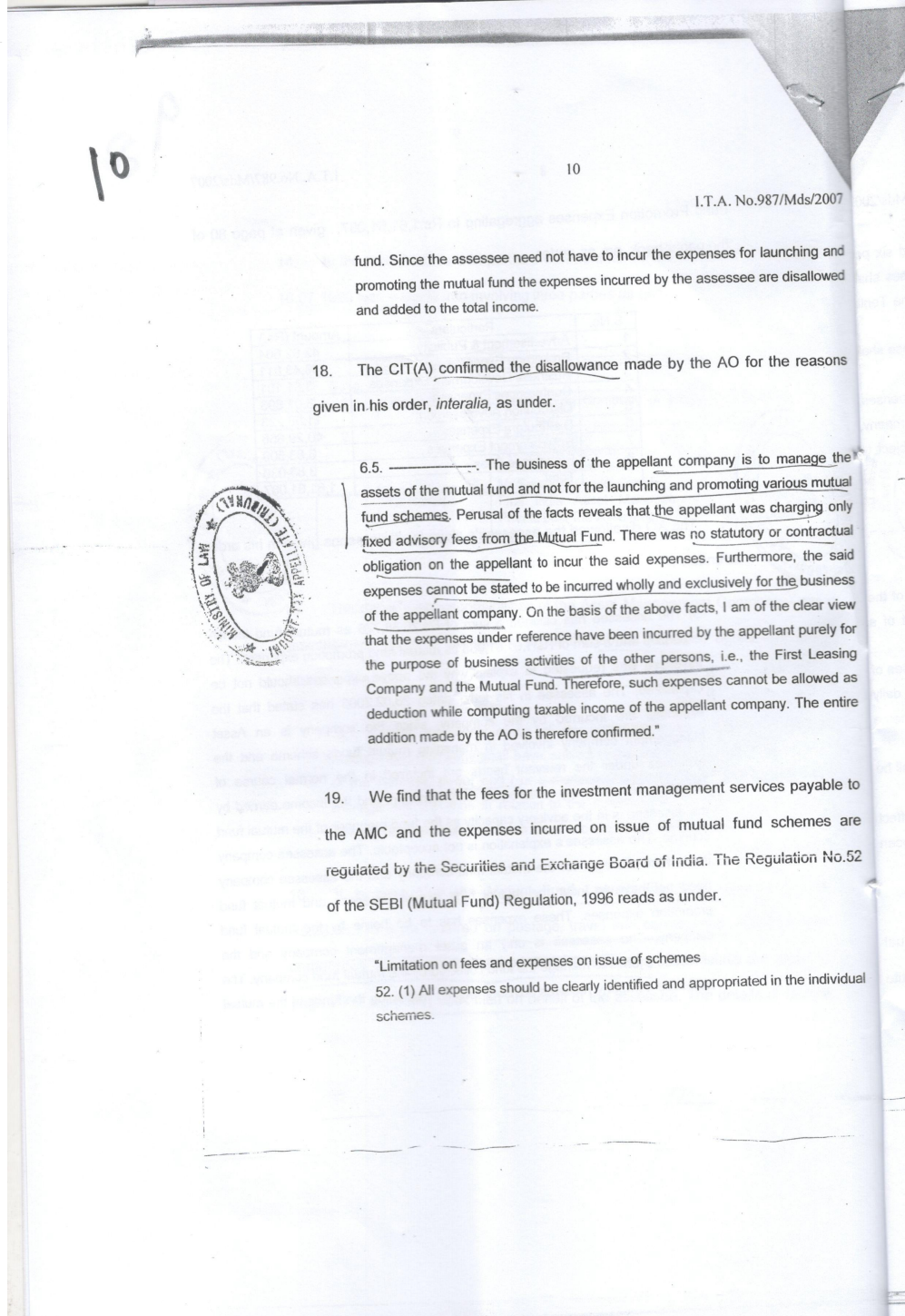
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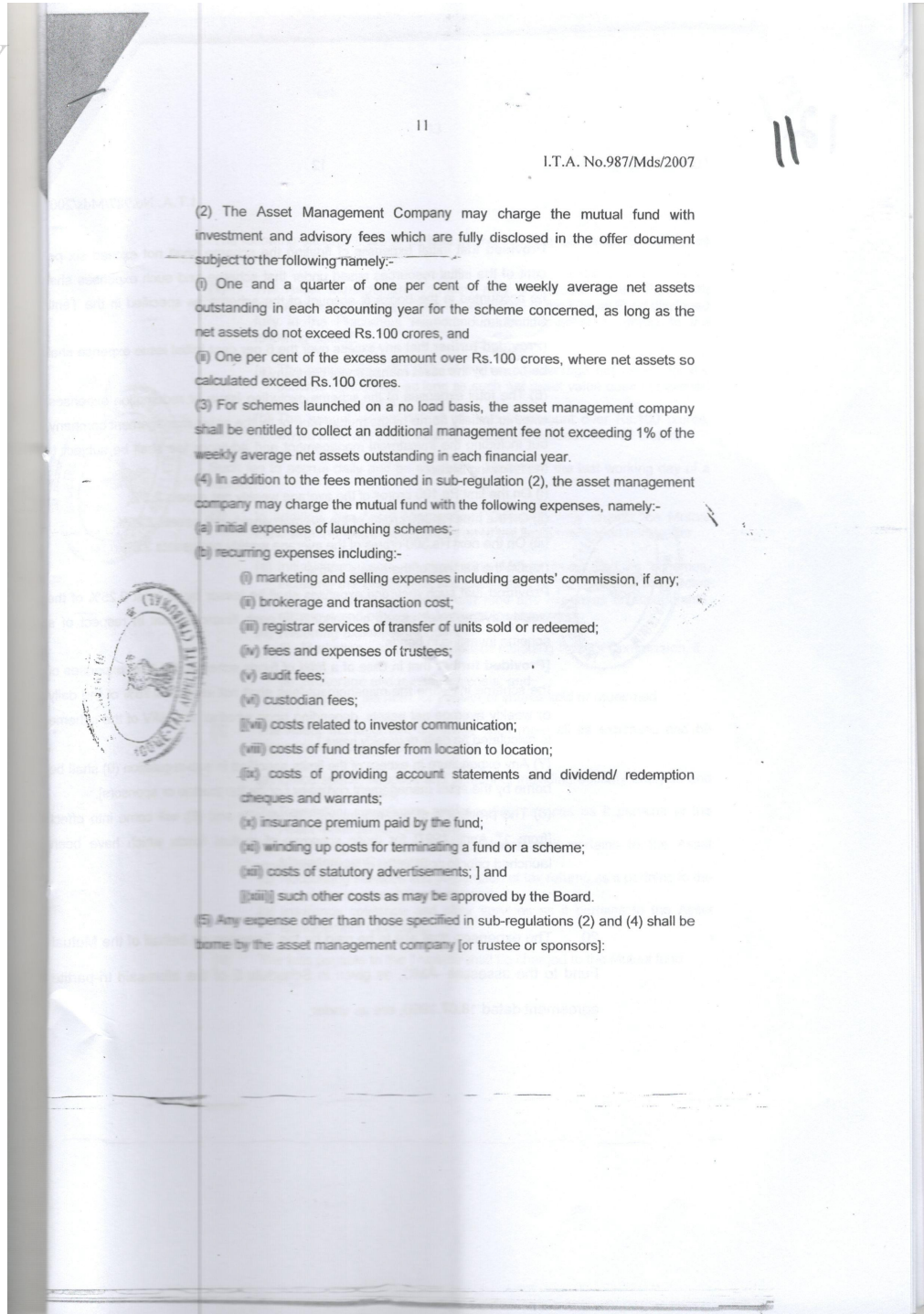
Fund Promotion Expenses aggregating to Rs.1,61,61,087, given at page 80 of the paper book, are as under.

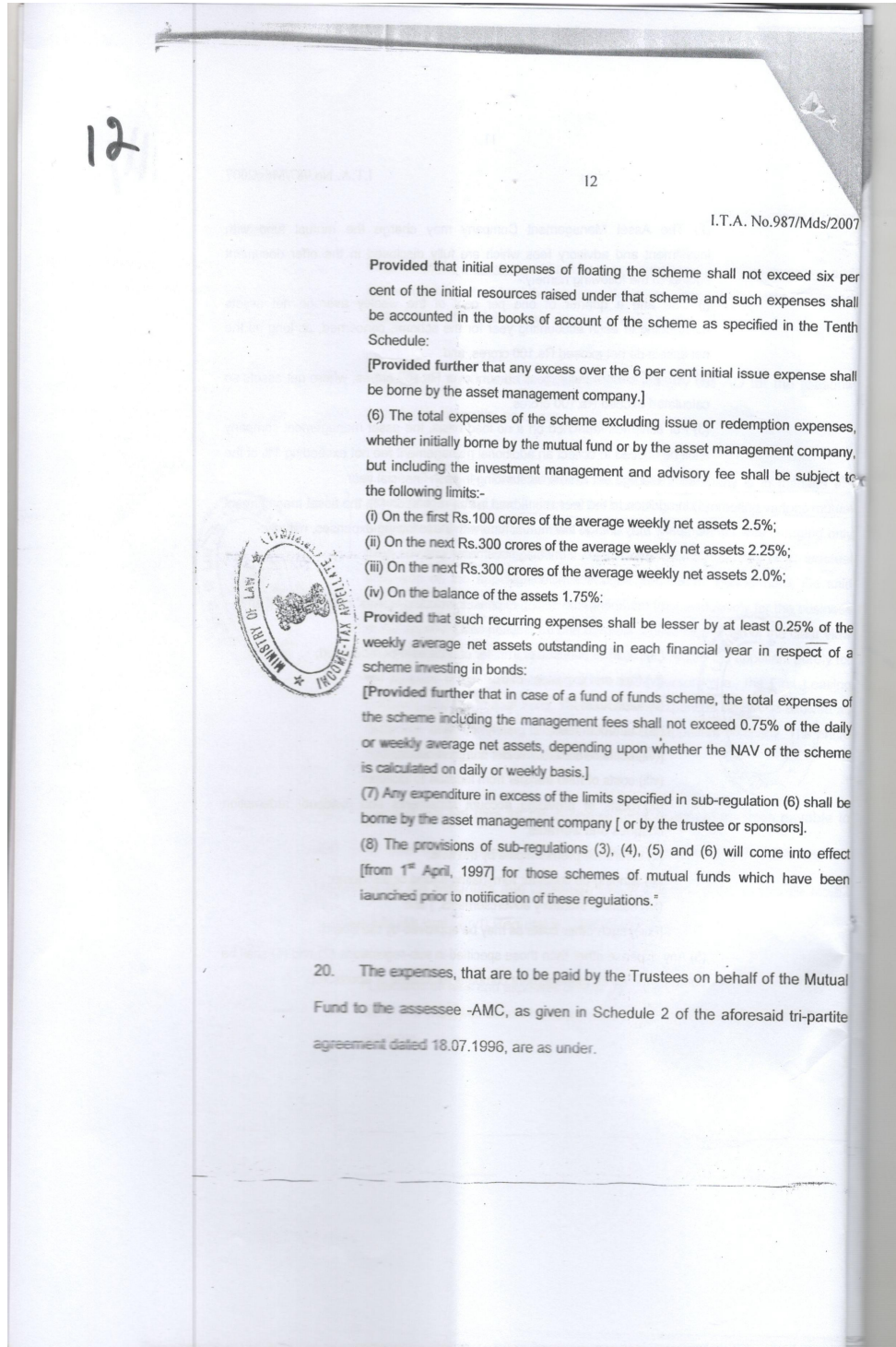
S.No.	Particulars	Amount (Rs.)
1	Advertisement & Publicity	42,92,664
2	Brokerage Expenses	49,43,811
3	Business Development Expenses	3,61,191
4	Conferences Expenses	3,05,803
5	Distribution Advertisement	11,58,223
6	Distributors Expenses	40,29,856
7	Entertainment Expenses	6,83,509
8	Franchisee Fees	3,86,030
	Total	1,61,61,087

17. The AO disallowed the assessee's claim for the reasons given in his order as under.

5) The assessee has claimed a sum of Rs.26,38,776 as mutual fund launch expenses and a sum of Rs.1,61,61,088 as mutual fund promotion expenses. The assessee was requested to explain why the above expenses should not be capitalized. The assessee in his letter dated 28.02.2006 has stated that the expenses are incurred by the company, since the company is an Asset Management company involved in managing mutual funds scheme and the expenses under the relevant heads are incurred in the normal course of business. The company is acting as fund managers and the income earned by the assessee is in the advisory capacity as the fund manager of the mutual fund scheme. The assessee's explanation is not acceptable. The assessee company is the fund manager for the mutual fund company and the assessee company need not have to incur the mutual fund launch expenses and mutual fund promotion expenses. These expenses has to be borne by the mutual fund company. The assessee is only an asset management company and the assessee's job is to manage the fund collected by the mutual fund company. The assessee company receives advisory fees for managing the funds of the mutual

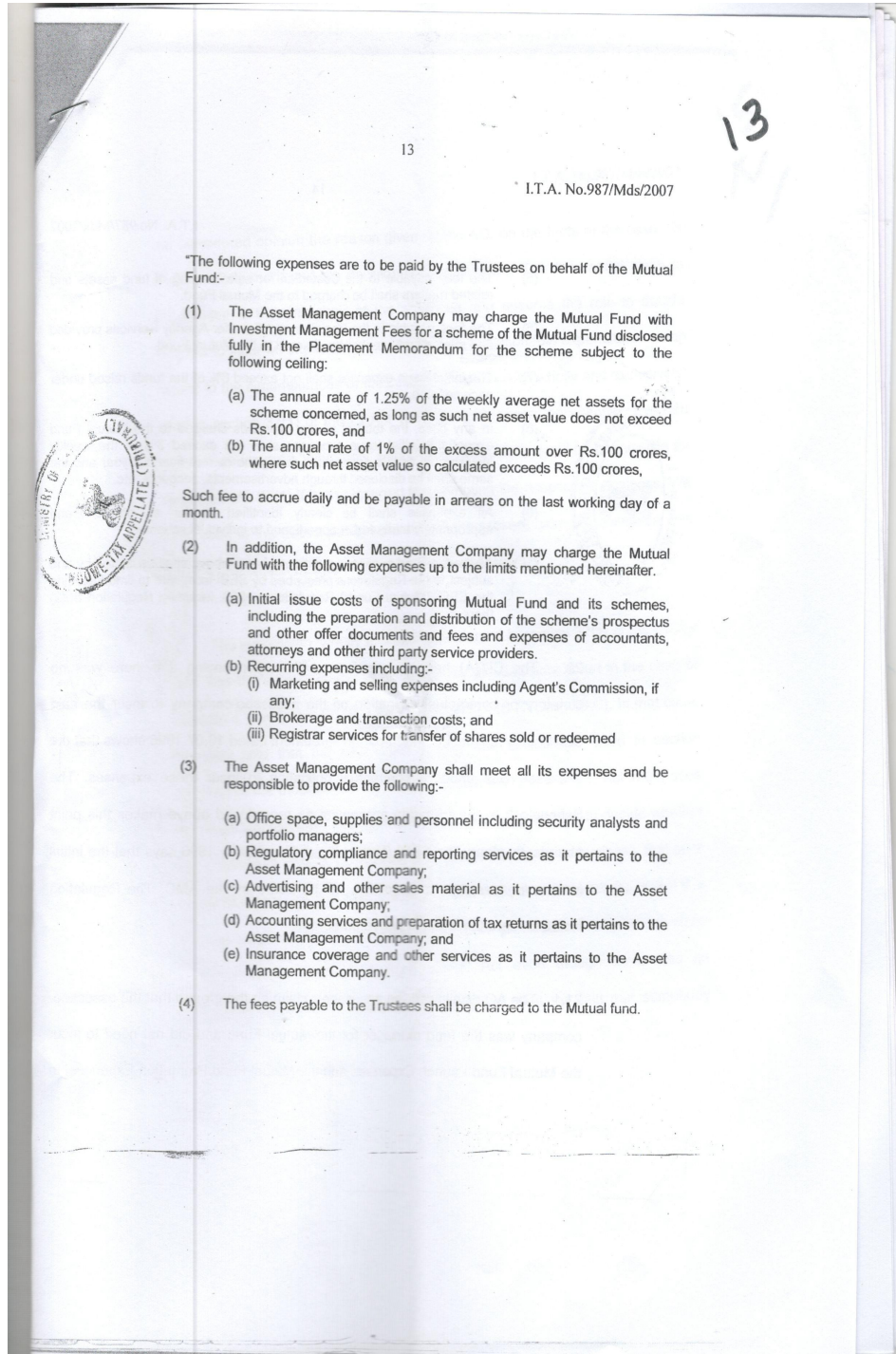


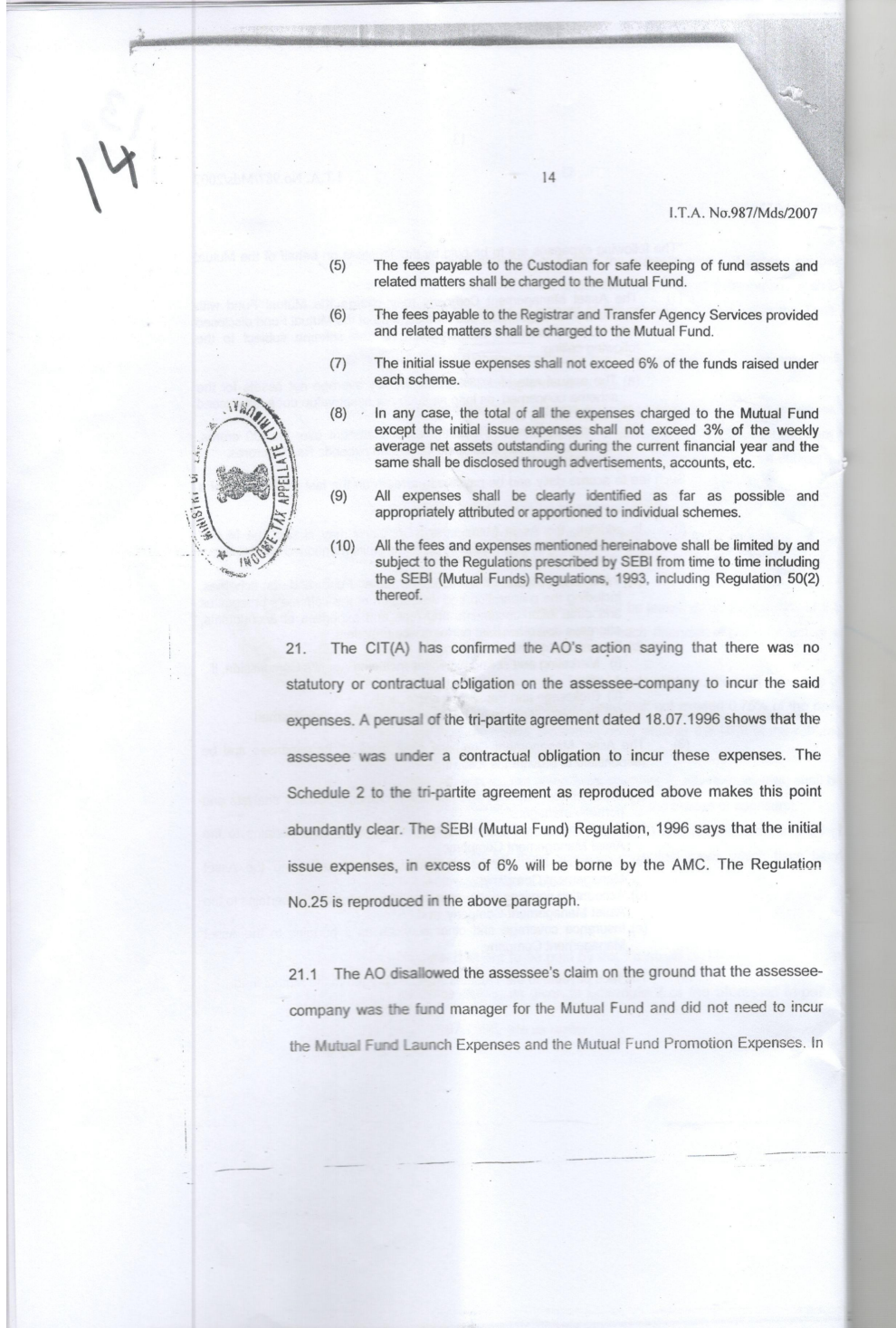


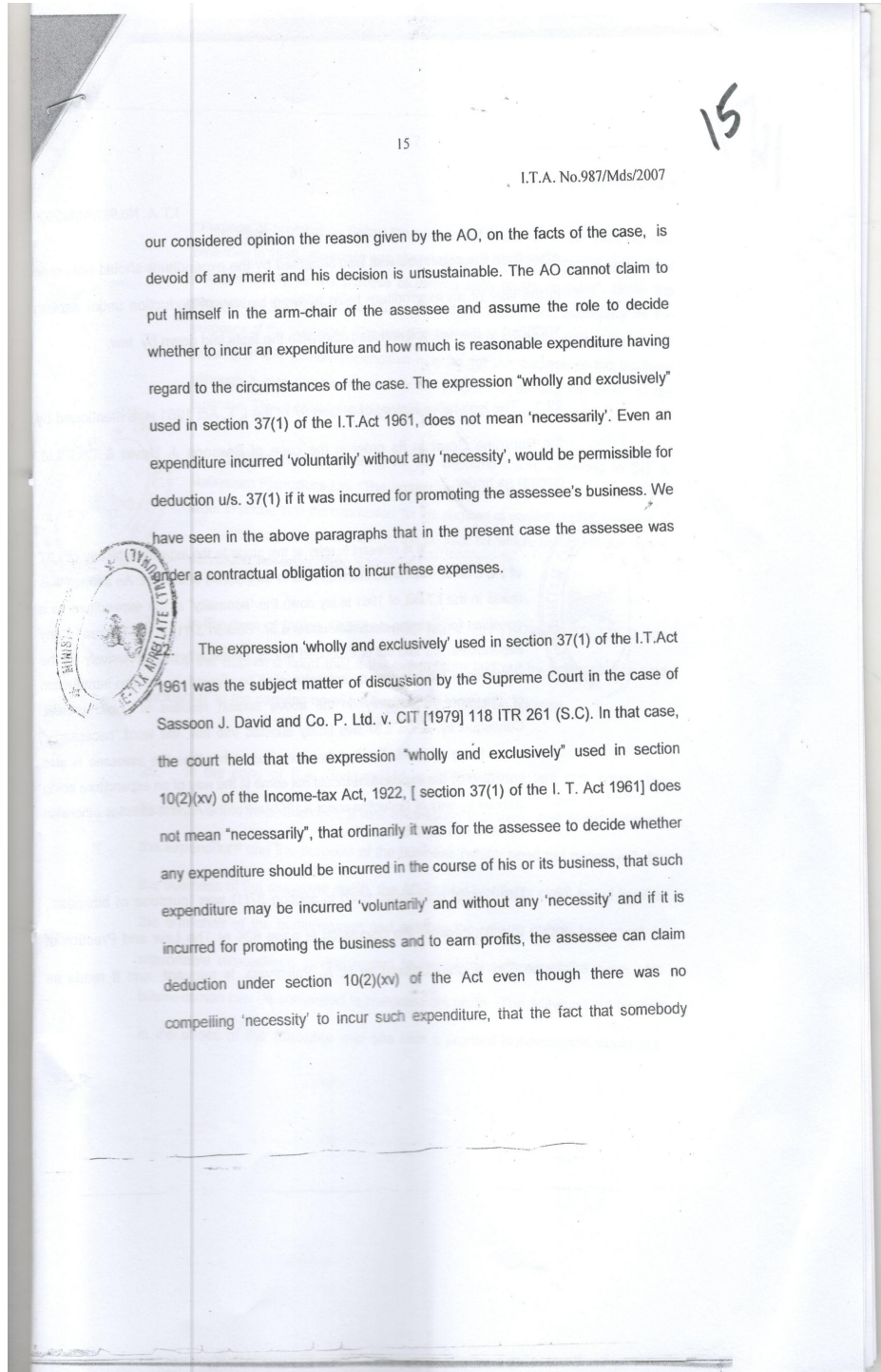


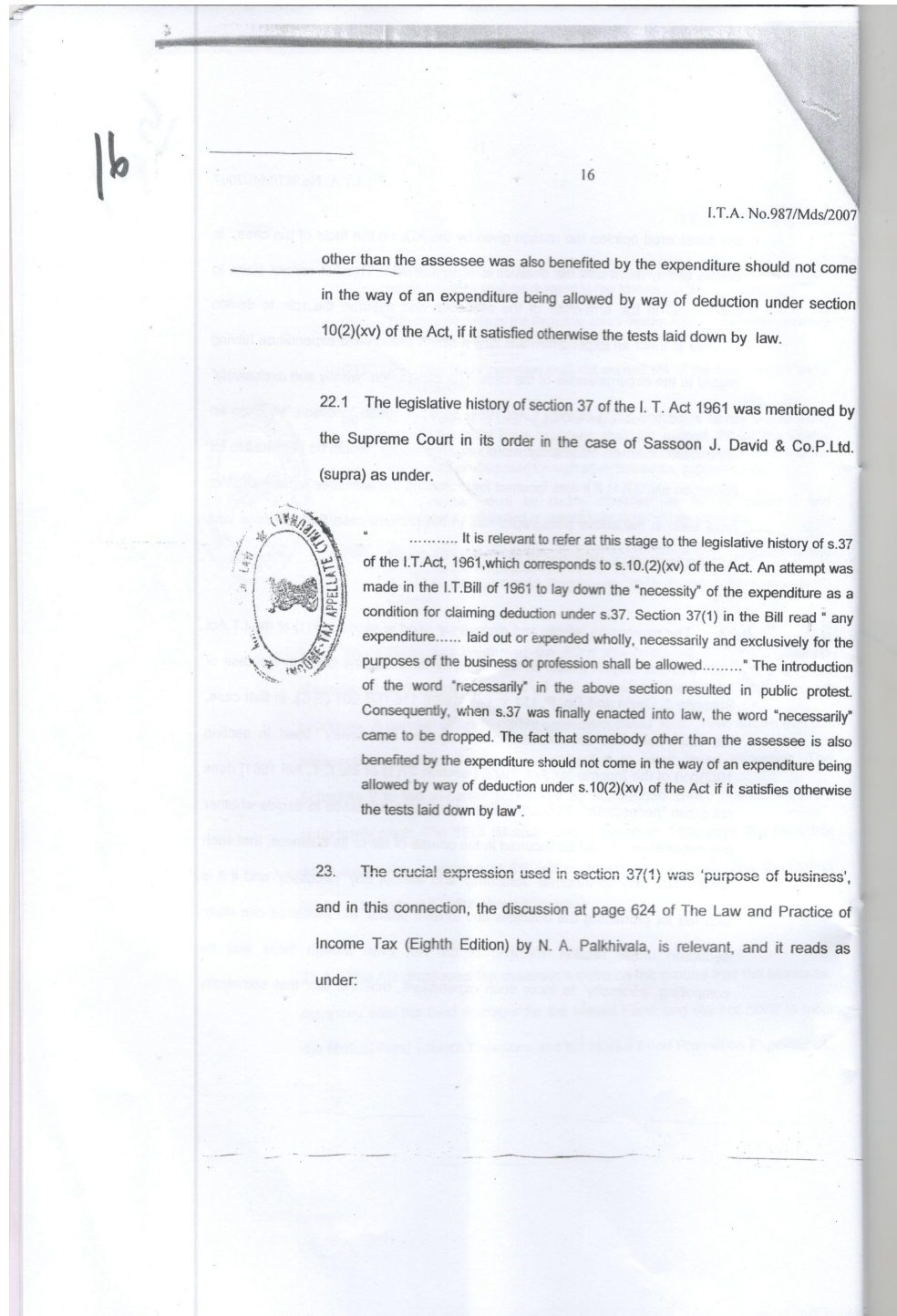


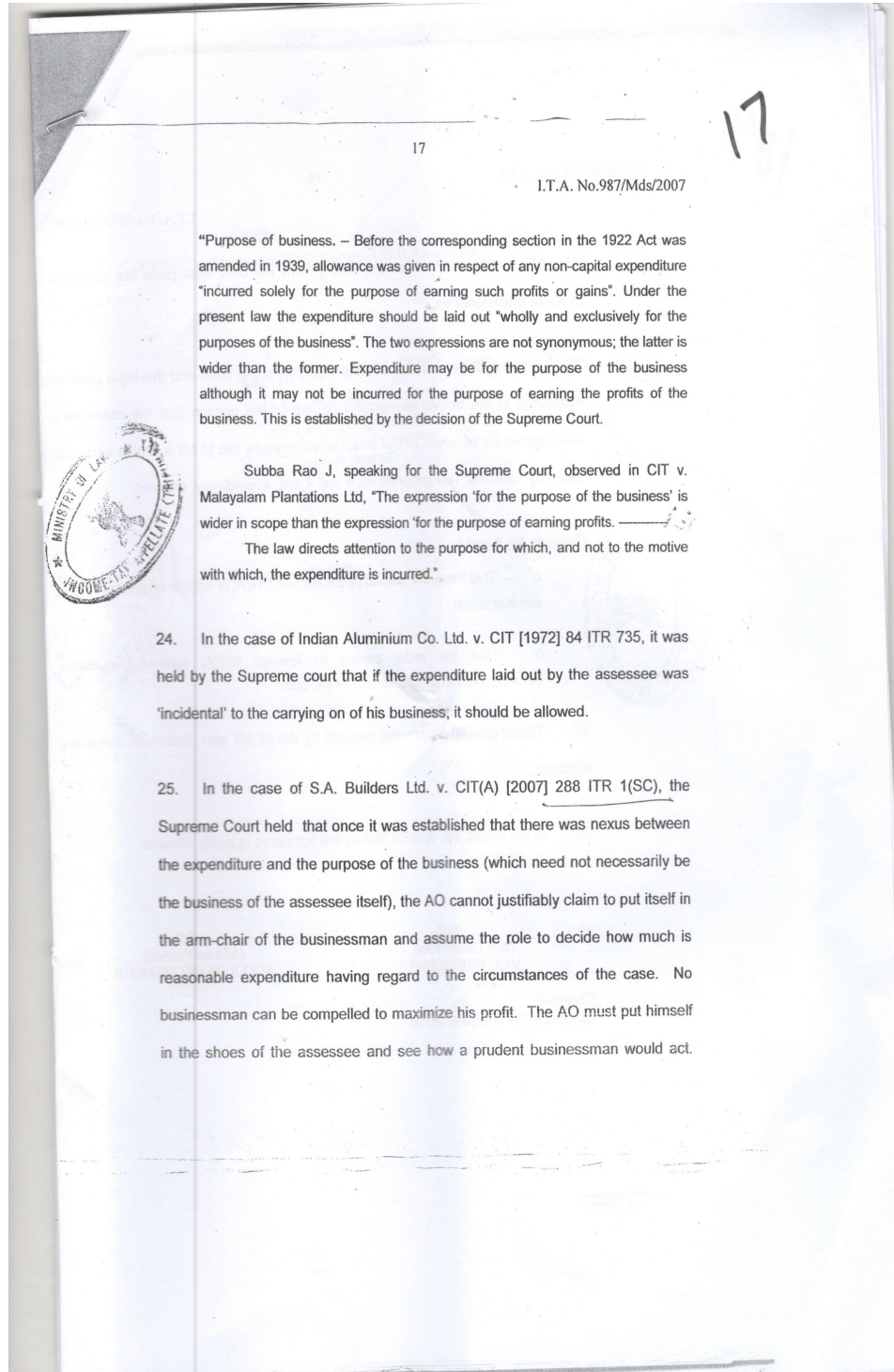
T.C.A. No.761 of 2010







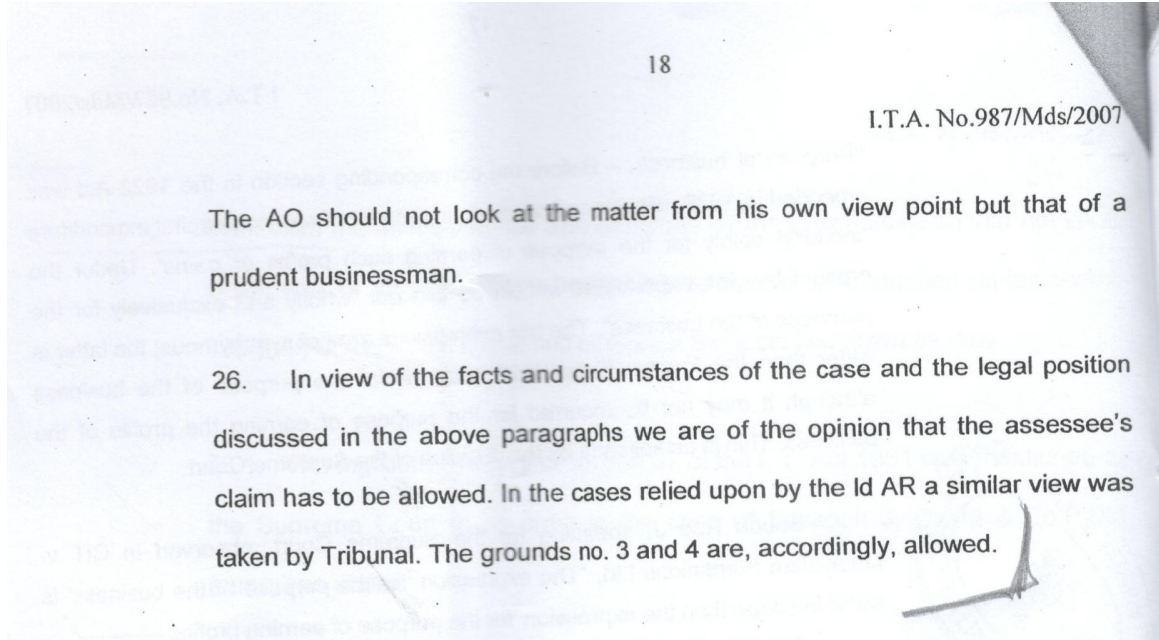






T.C.A. No.761 of 2010

WEB COPY



5. An appeal against the above order was preferred in this Court, which was withdrawn due to the low tax effect. Counsel for assessee states that even this case requires to be withdrawn for low tax effect, but Sri.Ravikumar disagreed. Sri.Ravikumar says, his instructions are that this is a recurring issue and therefore, should not be withdrawn.



T.C.A. No.761 of 2010

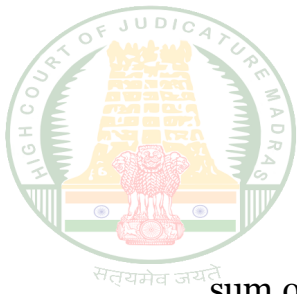
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6. Be that as it may, we agree with the findings of the ITAT. The Assessing Officer has disallowed the assessee's claim on the ground that the assessee was a fund manager for the mutual fund company and there was no need to incur the expenses. In our opinion, the Assessing Officer cannot claim to put himself in the arm chair of the assessee and assume the role to decide whether to incur the expenses and how much is a reasonable expenditure, having regard to the circumstances of the case.

7. For this view, we are also supported by the view expressed by a Division Bench of the Bombay High Court in ***Mahindra and Mahindra Ltd. vs. Commissioner of Income Tax***¹, which was authored by one of us (Chief Justice).

8. In that case, Mahindra was a promoter holding more than 27% of the equity shares of its group company called Machinery Manufacturers Corporation Ltd ("MMC"). It had to incur certain miscellaneous expenses amounting to Rs.42,89,185/- on behalf of MMC. It also had to recover a

¹[2023] 151 taxmann.com332 (Bombay)



T.C.A. No.761 of 2010

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sum of Rs.6,22,01,000/- which was not allowed to be written-off. Mahindra had also provided guarantee of Rs.200 lakhs to IDBI for the rehabilitation assistance disbursed by IDBI to MMC. Mahindra, to preserve and protect the value of good-will attached to it, decided to bear the unavoidable expenditure of Rs.42.89 lakh of MMC and included the same in miscellaneous expenses. The Assessing Officer disallowed the same as also the amount of Rs.6,22,01,000/- that it had written-off. The Court held that since the expenditure was wholly incurred for the purpose of commercial expediency because MMC was a group company of Mahindra and the nexus between Mahindra and MMC was not disputed, the AO failed to appreciate the claim in its proper perspective. The expenditure/debts should be treated as having been incurred for the purpose of business and directly relatable to the business of the assessee and thus eligible for deduction as business expenditure/loss in Mahindra's return of business income.

9. It will be apposite to reproduce paragraphs 25 to 27 of *Mahindra and Mahindra* (supra).

“25. One can understand the Assessing Officer had disallowed these amounts after arriving at a conclusion that the decision to incur the expenses mentioned above or the debts mentioned above was not



bonafide. That is not the case. Whether to treat the debt as bad debt or as business loss/deduction under Section 28 of the Act is a commercial or business decision of the assessee based on the relevant material in possession of the assessee. Once the assessee records the amounts as business loss/ deductions in his books of account that would prima facie establish that it was not recoverable loss unless the Assessing Officer for good reasons holds otherwise. The burden would be on the Assessing Officer to make out cogent reasons, which is not so in the case here. It is also not in dispute that the amounts spent were against/recoverable from group company MMC. It is quite obvious for reasons mentioned above that the amounts in question were incurred by appellant for the business expediency of the group company. It is not disputed that there existed a nexus between appellant and MMC. Such expenditure/debt should be treated as having been incurred for the purpose of business and directly relatable to the business of appellant and thus eligible for deduction as business expenditure in their return of business income. Otherwise it would not reflect the true profit and gain of appellant. A sum of money expended, not of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the grounds of commercial expediency, and in order indirectly to facilitate the carrying on the business, may yet be expended wholly and exclusively for the purposes of the trade as held in British Insulated and Helsby Cables Ltd. V/s. Atherton [1926] AC 205.

26 In Commissioner of Income Tax, Delhi V/s. Delhi Safe Deposit Co. Ltd.⁸ the Apex Court was examining whether the amount in question can be treated as an expenditure laid out or expended wholly and exclusively for the purposes of the business of the assessee which is admissible as a deduction under Section 37 of the Act when the assessee was claiming deductions on the ground that the expenditure was incurred due to commercial expediency. In that case also the assessee had incurred the expenditure in question to avoid any adverse effect on its reputation like the case at hand. The Apex Court held that the expenditure incurred was a deductible expenditure. In fact that was the case where three persons A, B and the assessing company, which had also other businesses, were partners in a managing agency firm with 50%, 25% and 25% shares, respectively. At the instance of A, a large sum of money was advanced by the managed company to another firm at Calcutta. When the demand for repayment was made, the Calcutta firm repudiated the claim and, out of the loss of Rs.1,90,092/- to the managed company, the sum of Rs.95,092/- was agreed to be borne by B, the assessee company and



D, who was the brother of A, who was inducted into the managing agency firm as partner in place of A. The assessee's claim to have the sum of Rs.9,500/- which was paid by it to the managed company during the previous year relevant to the assessment year 1962-1963 in partial discharge of its liability of Rs.47,500/- deducted as business expenditure, was disallowed by the Income Tax Officer and the AAC confirmed the order of the Income Tax Officer on the ground that the amount was actually the loss of a firm which was no longer in existence, that the loss had been borne by the assessee on personal considerations and that the managing agency firm had not claimed the loss in its return. The Appellate Tribunal reversed the order of the AAC and allowed the assessee's claim on the ground that though there was a change in the constitution of the firm, the assessee's liability had not ceased, that since the assessee was a company there was no question of any personal consideration and that the assessee had made the payment purely on business considerations with the sole object of maintaining its business connection which was yielding profit. On a reference, the High Court held that the assessee was entitled to the deduction claimed. On appeal, the Apex Court held that the assessee incurred the expenditure in question to avoid any adverse effect on its reputation, to protect the managing agency, which was an income earning apparatus, and for retaining it with the reconstituted firm in which the interest of the assessee was the same as before. The Apex Court, therefore, held that the expenditure was laid out on purely business considerations and wholly for the purpose of the assessee's business. The Apex Court also held that the true test of an expenditure laid out wholly and exclusively for the purposes of trade or business is that it is incurred by the assessee as incidental to his trade for the purpose of keeping the trade going and of making it pay and not in any other capacity than that of a trader and the expenditure incurred on the preservation of a profit earning asset of a business is always a deductible expenditure. It will be useful to reproduce the relevant portion, which reads as under :

The first question which needs to be examined is whether the amount in question can be treated as an expenditure laid out or expended wholly and exclusively for the purposes of the business of the assessee which is admissible as a deduction under s. 37 of the Act. It is no doubt true that the solution to a question of this nature sometimes is difficult to arrive at. But, however difficult the task may be, a decision on that question should be given having regard to the decisions bearing on the



question and ordinary principles of commercial trading and of commercial expediency. The facts found in the present case are that the assessee was carrying on business as a partner of the managing agency firm and it also had other businesses, the managing agency agreement with the managed company was a profitable source of income and that the assessee had continuously earned income from that source. But on account of the negligence on the part of one of its partners, there arose a serious dispute which could have ordinarily resulted in a long drawn out litigation between the managing agency firm and the managed company affecting seriously the reputation of the assessee in addition to any pecuniary loss which the assessee as a partner was liable to bear on account of the joint and several liability arising under the law of partnership. The settlement arrived at between the parties prevented effectively the hazards involved in any litigation and also helped the assessee in continuing to enjoy the benefit of the managing agency which was a sound business proposition. It also assisted the assessee in retaining the business, reputation unsullied which it had built up over a number of years. It is also material to notice here that it was not shown that the settlement was a gratuitous arrangement entered into by the assessee to benefit the defaulting partner, exclusively even though he might have been benefited to some extent. It is no doubt true that it was voluntary in character but on the facts and in the circumstances of the case, whether it would make any difference at all is the point for consideration.

Dealing with the question whether an expenditure incurred by a brewery in aid of their tenants of tied houses as a necessary incident of the profitable working of the brewery business was an admissible expenditure in the computation of the income-tax liability of the brewery, Lord Sumner upholding the above claim observed in Usher's Wiltshire Brewery L'd. v. Bruce [1915] AC 433, 469 (HL), thus:

Where the whole and exclusive purpose of the expenditure is the purpose of the expender's trade, and the object which the expenditure serves is the same, the mere fact that to some extent the



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T.C.A. No.761 of 2010

expenditure enures to a third party's benefit, say that of the publican, or that the brewer incidentally obtains some advantage, say in his character of land- lord, cannot in law defeat the effect of the finding as to the whole and exclusive purpose.

In British Insulated and Helsby Cables Ltd. v. Atherton [1926] AC 205; [1925] 10 TC 155, 193 (HL), Lord Cave observed:

It was made clear in the above cited cases of Usher's Wiltshire Brewery v. Bruce [1915] AC 433 (HL) and Smith v. Incorporated Council of Law Reporting for England and Wales [1914] 3 KB 674 (KB), that a sum of money expended, not of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the grounds of commercial expediency, and in order indirectly to facilitate the carrying on of the business, may yet be expended wholly and exclusively for the purposes of the trade.....

Rowlatt J. in Mitchell v. B. W. Noble Ltd. (1927) 1 KB 719; 11 TC 372, held that the money spent on getting rid of a director and saving the company from scandal was deductible. Affirming the above view, the Court of Appeal (whose judgment appears at p. 731) held that as the payment was not made to secure an actual asset so as effectually to increase the capital of the company but was made in order to enable the directors to carry on the business of the company as they had done in the past unfettered by the presence of the retiring director, which might have had a bad effect on the credit of the company, it must be treated as revenue and not as capital expenditure and was deductible as such for income-tax purposes.

The true test of an expenditure laid out wholly and exclusively for the purposes of trade or business is that it is incurred by the assessee as incidental to his trade for the purpose of keeping the trade going and of making it pay and not in any other capacity than that of a trader. In CIT v. Malayalam Plantations Ltd. [1964] 7 SCR 693; 53 ITR 140, 180, Subba Rao J. (as he then was) summarised the



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T.C.A. No.761 of 2010

legal position, at p. 705, thus:

The aforesaid discussion leads to the following result: The expression for the purpose of the business' is wider in scope than the expression for the purpose of earning profits. Its range is wide: it may take in not only the day to day running of a business but also the rationalization of its administration and modernization of its machinery; it may include measures for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile title; it may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for carrying on of a business; it may comprehend many other acts incidental to the carrying on of a business. However wide the meaning of the expression may be, its limits are implicit in it. The purpose shall be for the purpose of the business, that is to say, the expenditure incurred shall be for the carrying on of the business and the assessee shall incur it in his capacity as a person carrying on the business.

In the instant case, the assessee incurred the expenditure in question to avoid any adverse effect on its reputation, to protect the managing agency which was an income earning apparatus and for retaining it with the reconstituted firm in which the interest of the assessee was the same as before. It was likely that but for the expenditure, the fair name of the assessee would have been tarnished or rendered suspicious and the managing agency would have been terminated. The expenditure incurred on the preservation of a profit earning asset of a business has always been held to be a deductible expenditure by courts. In the circumstances, it is difficult to hold that the expenditure incurred by the assessee was either gratuitous or one incurred outside the trading activities of the assessed, The expenditure was, therefore, rightly held to be deductible under s. 37.

27. In the case at hand also the expenditure incurred were wholly incurred for the purpose of commercial expediency because MMC was a group company of appellant and appellant was, as could be



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T.C.A. No.761 of 2010

seen from the orders passed by BIFR, keen in the preservation of MMC and to keep it as a going concern. The nexus between appellant and MMC is also not disputed. The Assessing Officer failed to appreciate the claim in the proper perspective. Appellant participated in the rehabilitation scheme of MMC and lent rehabilitation assistance by paying amounts to MMC as well as by converting its existing ICDs with MMC into rehabilitation assistance. Appellant also provided a guarantee of Rs.200 lakhs to IDBI for the rehabilitation assistance disbursed by IDBI to MMC. If there was no commercial expediency, there was no reason for appellant to incur these amounts or participate in the rehabilitation scheme of MMC. Appellant was also the managing agents of MMC and MMC was also a Mahindra Group Company. It is certainly not necessary for the name of Mahindra and Mahindra to be used in the name of MMC to prove it was a group company. These expenditure/debts should be treated as having been incurred for the purpose of business and directly relatable to the business of the assessee and thus eligible for deduction as business expenditure/loss in assessee's return of business income. The expenditure incurred by appellant or the debts that were recoverable from MMC, in our view, therefore, would certainly be deductible expenditure under Section 28 of the Act."

In the circumstances, we answer the substantial question of law in the affirmative. Appeal is, accordingly, dismissed. There shall be no order as to costs.

(K.R.SHRIRAM, CJ.)

(SUNDER MOHAN, J.)

10.06.2025

Index : Yes
Neutral Citation : Yes

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T.C.A. No.761 of 2010

WEB COPY

- To
1. The Income Tax Appellate Tribunal Madras 'A' Bench.
 2. The Commissioner of Income Tax, Chennai.



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T.C.A. No.761 of 2010

The Hon'ble Chief Justice
and
Sunder Mohan, J.

(sra)

T.C.A. No.761 of 2010

10.06.2025