

Form No.HCJD/C-121

ORDER SHEET

LAHORE HIGH COURT

RAWALPINDI BENCH RAWALPINDI

JUDICIAL DEPARTMENT

I.T.R.No.01 of 2017.

Sheikh Naseem Akhtar vs. Commissioner Inland Revenue (Legal) etc.

Sr. No. of order/ proceedings	Date of order/ proceedings	Order with Signature of Judge, and that of parties or counsel, where necessary.
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03.03.2025. Mr. Zahid Shafique, Advocate for the applicant.
Malik Itaat Hussain Awan, Advocate for the respondents
alongwith Yousaf Khan, Staff Officer, I.R (Legal)
(Hqrs), R.T.O., Rawalpindi.
Hafiz Muhammad Idrees, Advocate/*amicus curiae*.

By way of filing this reference application under Section 133 of the Income Tax Ordinance, 2001 (hereinafter to be referred as the “Ordinance”), the Applicant has challenged impugned order dated 21.09.2016, passed by the Appellate Tribunal Inland Revenue Islamabad Bench, Islamabad (the “Appellate Tribunal”) in I.T.A.No.698/IB/2016 (Tax Year 2015).

2. Briefly, facts of the case are that the taxpayer drove income from the sale/purchase of kitchen/table glass ware and filed return for tax year, 2015, which was taken to be assessment order under Section 120 of the “Ordinance”. Notice under Section 122(5A) was served by confronting payment of turnover/minimum tax under Section 113 and construing the assessment order as erroneous and prejudicial to the interest of revenue. The Applicant filed reply thereto, which was found to be unsatisfactory, as such, claim of Applicant that turnover tax should have been charged on reduced rate instead of normal rate of 1% as the same falls in the definition of fast moving goods. The following question is proposed and pressed:-

“Whether under the facts and circumstances of the case the learned ATIR was justified in not giving the benefits of reduced rate of Income Tax as the applicant is fully entitled for reduce rate of Income Tax as per Division-IX Part-I of First Schedule of the Income Tax Ordinance, 2001?”

3. Learned counsel for the Applicant submitted that the impugned order is not only illegal and perverse but also contrary to the law and facts of the case. Further argued that the Appellate Tribunal has erred in law while passing the impugned order.

4. On the other hand, learned counsel for the Respondents-Department while defending the impugned order submitted that the same has been passed in accordance with law, as such, does not require any interference by this Court.

5. Arguments of all present have been heard at length, law on the subject as well as the precedents referred by the parties has been gone through.

6. It is not disputed that applicant/taxpayer was driving income from wholesale of glass and its distribution is part of this business. The Respondent-Department's contention remained that glassware items are though fast moving consumer goods yet they fall within the purview of durable items, hence, excluded from the benefit of tax reduction in view of subsequent amendment. When confronted, learned counsel went on to argue that the said amendment has retrospective effect. So, this appears to be the first moot point which requires divulgence of this Court.

7. Apropos to mentioning further details, it is necessary to point out here that the instant tax reference pertains to year 2015. The definition of 'fast moving consumer goods' under

Section 2(22A) of the Ordinance, which was inserted through Finance Act, 2015 was as under:-

“(22A) “fast moving consumer goods” means consumer goods which are supplied in retail marketing as per daily demand of a consumer.”

However, by way of insertion made through Finance Act, 2017 the definition of fast moving consumer goods was amended as under:-

“2[(22A) “fast moving consumer goods” means consumer goods which are supplied in retail marketing as per daily demand of a consumer³ [excluding durable goods].”

8. The inclusion of the words ‘excluding durable goods’ has in fact ignited the argument of respondent/department’s counsel that given retrospective effect of this exclusion, the applicant is not entitled to be charged at a reduced rate. While answering this argument, as settled in case titled Fawad Ahmad Mukhtar and others versus Commissioner Inland Revenue (Zone-II), Regional Tax Office, Multan and another (2022 PTD 454), it is a fundamental principle that each tax year is a separate unit of account and taxation, therefore, the definition of ‘fast moving consumer goods’ will apply as it stood in tax year 2015 prior to introduction of subsequent definitions which, of course, do not carry retrospective effect.

9. This Court, in case titled Commissioner Inland Revenue versus Messrs Haier Pakistan (Pvt.) Ltd. (2018 PTD 1582), bearing similar nature, has already addressed an issue while defining the term ‘fast moving consumer goods’ wherein it was held that”-

“As the fact that respondent taxpayer was distributor/wholesaler of electric appliances was not disputed before the Appellate Tribunal, hence first condition stands fulfilled. Whether electric appliances are 'consumers good' is the question, required to be

interpreted. The term 'consumers good' is not defined in the Ordinance, therefore, its dictionary means would be relevant. Black's Law Dictionary (Eighth Edition) defines; "consumer goods". Goods bought or used primarily for personal, family, or household purpose, and not for resale or for producing other goods." It is not a plea of applicant department that use of the electric appliances was other than personal, family or household purpose. It does not matter whether electric appliances are fast moving consumers goods or not because; word including is use right after the term 'consumers goods' and before the phrase 'fast moving consumers goods'. The syntax of this Clause shows that term 'consumers goods' is inclusive and the phrase 'fast moving consumers goods' is to be read in it.''

10. It has further been held by the Hon'ble Supreme Court of Pakistan in case titled The Collector of Sales Tax And Central Excise, Ltu, Karachi versus Messrs Pak Suzuki Co. Ltd., Karachi (2016 P T D 867):-

14. An overview of the above reveals the legal position that as a general rule, the Courts look with favor upon Remedial and Curative enactments, which are beneficial in nature and are interpreted in the context of the evil to be cured and the mischief to be remedied. Its provisions are to be liberally construed so as to advance the remedy and suppress the mischief and to ensure that the legislative intent, in this behalf, is not frustrated. Remedial and Curative statutes generally are retroactive in their application and apply to pending proceedings. However, in the absence of the express words to the contrary, the enactment should not ordinarily be construed to destroy vested rights, create new liabilities and obligations or disturb past and closed transactions. Needless to say that any interpretation, which offends against any Constitutional provision, would not be acceptable.''

11. In another case titled Fawad Ahmad Mukhtar and others versus Commissioner Inland Revenue (Zone-II), Regional Tax Office, Multan and another (2022 PTD 454) the Hon'ble Supreme Court held that:-

"14. Now, the clause was an exemption and, by definition, an exemption has a beneficial effect. But, as

correctly pointed out by learned counsel for the department, simply because a statutory provision has a beneficial effect does not mean that it automatically has, or can have, retrospective effect. If this were so, then that would be true for all exemptions, i.e., any exemption added to or inserted in any of the Parts of the Second Schedule could be claimed to have retrospective effect more or less automatically. This can hardly be the correct position in law. Especially in the context of income tax law, it would tend to run counter to the fundamental principle already noted, that each tax year is a separate unit of account and taxation. Of course, the principle is not sacrosanct. It can be overridden by the legislative will. But that must be done either expressly or shown to be the necessary intendment of the provision sought to be applied retrospectively. There is nothing in either Clause 103B or the Finance Act, 2010 that expressly gave it retrospective effect. Therefore the taxpayer-appellants have to show that the clause was necessarily intended to have retrospective effect."

(emphasis supplied)

12. Moreover, this Court has already given its observation as to different rules of interpretation in case titled Commissioner Inland Revenue Versus Muhammad Aslam (2019 PTD 381) as under:-

"7. The question as to whether beneficial, remedial or curative legislation has a retrospective effect is of vital importance. Generally speaking, retroactive legislation is looked upon with disfavour. However, beneficial enactments are given liberal construction and are given retrospective effect if they are curative or remedial (...)
8. For the sake of completeness, it may also be added that in the absence of express words to the contrary, the remedial and curative enactments are not ordinarily construed to destroy vested rights, create new liabilities and obligations or disturb past and closed transaction."

13. The study of above referred case law clearly shows that retrospective effect to legislation can only be given if it appears beneficial for any person. An attempt on part of Respondent/Department to bring the case of applicant within the 'exclusion ambit' of the amended definition clause of "fast

moving consumer goods” simply meant to deprive him of the benefit of the reduced tax rate. So much so, it also means to create a new liability and to disturb past and closed transaction. The plea of retrospective effect of the amendment, taken by the Respondent/Department is, therefore repelled.

14. Now comes the second moot point, which relates to the rate of tax to be applied on the applicant for the tax year 2015. Reduced tax rate was withdrawn by way of amendment brought through the Finance Act, 2014, whereby, clause 8 which was inserted in Part-III of Second Schedule in November 2010 (through SRO No.1086(I)/2010) stood omitted. At the time of introduction, this clause was inserted in Part-III (Reduction in Tax Liability) of Second Schedule (Exemptions and Tax Concessions under section 53) as an exemption/ tax reduction provision. Through Finance Act, 2014, another amendment in Income Tax Ordinance 2001 was brought which read as follows:-

(39) in the FIRST SCHEDULE,----

(I) in Part I,----

.....

.....

(F) after Division VIII, amended as aforesaid, the following new Division shall be added, namely,----

Division IX Minimum tax under section 113
S.No.Person(s)Minimum Tax as percentage of the person's
turnover for the year

(1) (2) (3)

1. (a) ...

(b) ...

(c) ... 0.5%

2. (a) Distributors of pharmaceutical products, consumer goods including fast moving consumer goods fertilizers and cigarettes:

- (b) Petroleum agents and distributors who are registered under the Sales Tax Act, 1990;
- (c) Rice mills and dealers under the Sales Tax Act, 1990
- (d) Flour mills. 0.2%
- 3. 0.25%
- 4. In all other cases 1%

15. Through this amendment, consumer goods including “fast moving consumer goods” were placed under the head of ‘Minimum Tax’ to be so dealt in accordance with the provision of section 113 of the Income Tax Ordinance, 2001. All correspondence with department i.e. Order under Section 122(5A) to amend Original Assessment Prejudicial to Revenue dated 04.03.2016 of the Additional Commissioner Inland Revenue Audit-Range-I, Order dated 05.05.2016 of the Commissioner Inland Revenue (Appeals-III), Rawalpindi as well order dated 21-09-2016 of the Appellate Tribunal Inland Revenue, Islamabad Bench, Islamabad clearly reflects that Applicant/taxpayer was ordered to pay minimum tax @ 1% of the total turnover under the head ‘In all other cases’ mentioned at S.No.4 of Division IX. The mentioned supra correspondence on behalf of Department makes out all clear that the status of the tax payer as ‘Distributor’ has never been impugned. However, total turnover and profit and loss statistics were also appeared as such it entitled the tax payer to pay minimum tax. Only controversy which is thus narrowed down is that whether the taxpayer is dealing in ‘fast moving consumer goods’ and therefore entitled to pay 0.2% minimum tax of the total turnover or else liable to pay 1% minimum tax falling in the category mentioned at Sr.No.4 as ‘In all other cases’ as agitated by department. As settled in case titled Fawad Ahmad Mukhtar and others versus Commissioner Inland Revenue (Zone-II), Regional Tax Office, Multan and another (2022 PTD 454), it is

a fundamental principle that each tax year is a separate unit of account and taxation, therefore, the definition of ‘fast moving consumer goods’ will apply as it stood in tax year 2015 prior to introduction of subsequent definitions which, of course, do not carry retrospective effect.

16. This Court in case tilted Commissioner Inland Revenue versus Messrs Haier Pakistan (Pvt.) Ltd. (2018 PTD 1582), bearing similar nature, has already addressed an issue while defining the term ‘consumer goods including fast moving consumer goods’ wherein it was held that:-

“As the fact that respondent taxpayer was distributor/wholesaler of electric appliances was not disputed before the Appellate Tribunal, hence first condition stands fulfilled. Whether electric appliances are 'consumers good' is the question, required to be interpreted. The term 'consumers good' is not defined in the Ordinance, therefore, its dictionary means would be relevant. Black's Law Dictionary (Eighth Edition) defines; "consumer goods". Goods bought or used primarily for personal, family, or household purpose, and not for resale or for producing other goods." It is not a plea of applicant department that use of the electric appliances was other than personal, family or household purpose. It does not matter whether electric appliances are fast moving consumers goods or not because; word including is use right after the term 'consumers goods' and before the phrase 'fast moving consumers goods'. The syntax of this Clause shows that term 'consumers goods' is inclusive and the phrase 'fast moving consumers goods' is to be read in it.”

17. The next considerable question before this Court is whether table glassware should be subject to the same sales tax criteria as held in case tilted Commissioner Inland Revenue versus Messrs Haier Pakistan (Pvt.) Ltd. (2018 PTD 1582), particularly in cases where distributors of table glassware are required to pay a higher sales tax than those dealing in electronic appliances. The question involves assessing whether such differentiation is legally justified under fiscal and

constitutional principles or whether it constitutes an arbitrary and discriminatory tax policy.

18. It is very clear that Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 guarantees equal protection of the law and prohibits arbitrary discrimination between similarly situated persons henceforth. Imposing a higher sales tax on distributors of table glassware than on electronic appliances creates an unwarranted tax disparity, violating the principle of uniformity in taxation. The Supreme Court in case Messrs Elahi Cotton Mills Ltd. and others vs. FEDERATION OF PAKISTAN through Secretary M/o Finance, Islamabad and 6 others (PLD 1997 Supreme Court 582), has held that fiscal laws must conform to the principles of fairness, reasonableness, and equal treatment and that discriminatory tax policies must have a clear and rational basis. No rational distinction exists between table glassware and electronic appliances that would justify placing a higher tax burden on distributors of glassware while giving preferential treatment to electronics distributors. The principle of fiscal neutrality, recognized in both domestic and international taxation jurisprudence, dictates that goods or services serving similar economic functions should not be taxed differently without a justified legal or economic reason.

19. This is also a law from European Court of Justice (ECJ). In the case of Commission of the European Communities vs. French Republic (C-481/98), the Court held that discriminatory tax policies that distort fair competition among similar goods violate fiscal neutrality principles.

20. Now to decide the pivotal issue in this regard, is the glassware and electronic appliances both function as non-essential consumer durables and are sold through similar commercial distribution networks, therefore, placing a higher

tax burden on distributors of table glassware while allowing a lower rate for electronics distorts fair competition, discourages investment, and artificially inflates consumer prices for glassware without a legitimate policy basis.

Key points Justifying Equal Tax Treatment:

<u>Aspect</u>	<u>Table Glassware</u>	<u>Electronic Appliances</u>
Durability	Medium	High
Price Range	Generally lower	Higher price points
Tax Treatment	Higher sales tax on Distributors	Lower sales tax for distributors
Necessity vs. Luxury	Semi-essential (kitchenware)	luxury or utility-based
Purchase Frequency	Occasional	Rare, long-term investment

The Distributors of both categories operate under similar business conditions, yet those dealing in table glassware are burdened with a higher sales tax obligation without valid justification. If electronic appliances qualify for a minimum tax bracket, there is no rational reason to deny the same to glassware distributors.

21. The Sales Tax Act, 1990 is the primary law governing taxation on goods and services in Pakistan. Section 3 of the Act mandates a uniform sales tax rate unless exemptions or variations are explicitly provided by law. Hence the glassware distributors are subjected to a higher sales tax rate than electronics distributors without any specific legislative backing, making the policy inconsistent with statutory requirements. In Messrs D.G. Khan Cement Co. Ltd. vs. Federation of Pakistan (2008 PTD 425), the Court ruled that tax authorities must ensure consistency in tax treatment across comparable industries to avoid arbitrary taxation. As the higher tax rates on glassware distributors increase the final cost of goods for

consumers, creating an unfair market distortion. Higher taxation on distributors means higher retail prices, leading to reduced consumer purchasing power and affecting affordability. Essential household items such as glassware become unnecessarily expensive compared to electronic appliances. Glassware distributors are placed at a competitive disadvantage compared to other consumer durable industries. Also the small and medium-sized enterprises (SMEs) in the glassware sector face a disproportionate tax burden, discouraging growth and investment. This is admitted that the table glassware and electronic appliances share common market characteristics as consumer durables. There is no rational policy justification for taxing one at a higher rate than the other. Demanding a higher sales tax from glassware distributors while offering lower rates to electronics distributors violates the principle of equal taxation.

22. In conclusion to higher tax burdens on glassware distributors constitute discriminatory treatment under Article 25 of the Constitution. Pakistan's superior courts have consistently held that fiscal policies must be fair, uniform, and non-arbitrary. Increased taxation on glassware distributors harms businesses, discourages investment, and leads to higher consumer prices without valid justification. This Court holds that distributors of table glassware are entitled to the same sales tax criteria as distributors of electronic appliances. The imposition of a higher sales tax on glassware distributors is unjustified and inconsistent with the principles of fiscal equity, constitutional rights, and fair market competition. Tax authorities are directed to ensure uniformity in tax treatment and rectify any disparities in taxation between these categories of consumer durables.

23. Following this verdict in case tilted Commissioner Inland Revenue Versus Messrs Haier Pakistan (Pvt.) Ltd. (2018 PTD 1582), it can safely be concluded that the applicant/taxpayer was dealing in 'consumers goods' and thus he is liable to pay 0.2% minimum tax of the total turnover for tax year 2015.

24. For what has been discussed above, the proposed question is answered accordingly in the terms above.

25. This reference application is decided against the respondent-Department.

26. Office shall send a copy of this judgment under seal of the Court to the Appellate Tribunal Inland Revenue, Islamabad Bench Islamabad as per Section 133(8) of the Income Tax Ordinance, 2001.

(JAWAD HASSAN)
JUDGE

(MALIK JAVID IQBAL WAINS)
JUDGE

Approved for reporting

JUDGE

JUDGE

M.AYYUB