

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Miangul Hassan Aurangzeb

Civil Petitions No. 885 to 887 of 2024

*[Against the judgment dated 22.11.2023 of the
Peshawar High Court, Peshawar passed in Tax
Reference Nos. 22-P to 24-P of 2019]*

The Commissioner of Inland Revenue, Peshawar. ... Petitioner
[In all cases]

Versus

M/s Sufi Tahir Nadeem. ... Respondent
[In all cases]

For the Petitioner: Mr. Ghulam Shoaib Jally, ASC.
[In all cases] Dr. Ishtiaq Ahmed Khan,
Director-General (Law), FBR.

For the Respondent: Mr. Muhammad Tariq, ASC.
[In all cases] *[Via video-link from Peshawar]*

Date of Hearing: 23.05.2025.

ORDER

Muhammad Shafi Siddiqui, J. These petitions for leave to appeal have been filed against the judgment dated 22.11.2023 of the Peshawar High Court, Peshawar, whereby tax references filed by the petitioner-department were dismissed.

2. Respondent-taxpayer, who is an individual, derived income from distribution (per orders) of (i) Bopp Composite/Plain Film, (ii) Pet Film, (iii) CPP Metalized Film and (iv) CPP Milky Film (hereinafter referred to as '**the goods**'). The respondent-taxpayer filed returns for the tax years 2015 to 2017. On examination by the department, that the tax liability on the respondent-taxpayer on the basis of turnover declared by him, was not proper, the return for the tax year 2015 was selected for audit under section 177 of the Income Tax Ordinance, 2001 ('**the Ordinance**') and the deemed

assessment was accordingly amended under section 122(1) of the Ordinance by the officer Inland Revenue creating tax liability under section 113 of the Ordinance on the basis of declared turnover. The declared position for the tax years 2016 and 2017 was the same, consequently, the Additional Commissioner Inland Revenue invoked section 122(5A) of the Ordinance and created tax liability under section 113 of the Ordinance on the basis of turnover declared by the respondent-taxpayer.

3. Aggrieved of it, the respondent-taxpayer filed appeal against the amended order referred above and took the plea before the appellate authority that he was dealing in distribution of Fast Moving Consumer Goods ('FMCG'), which were subjected to tax rate of 0.2% (minimum tax) as per Division IX, Part-IV of First Schedule to the Income Tax Ordinance, 2001, instead of 1% (minimum tax) rate applied by the Assessing Officer. The Commissioner Inland Revenue rejected the stance of the taxpayer.

4. On the second appeal preferred by the respondent-taxpayer before the Appellate Tribunal Inland Revenue, Peshawar Bench (hereinafter referred to as '**the Tribunal**') it annulled the order of the authority below by placing reliance upon the judgment dated 10.06.2014 of the Appellate Tribunal Inland Revenue passed in ITA Nos.1203, 1204 and 1205/LB/2014 in which the criteria for qualifying as FMCG were held as (i) frequent purchase, (ii) high turnover and (iii) extensive sales network. In consequence thereof the Commissioner Inland Revenue-petitioner filed Tax References before the High Court, which were dismissed and the questions of law were answered in negative against the department and in favour of the taxpayer *vide* impugned judgment dated 22.11.2023.

5. We have heard the learned counsel and perused the material available on record. The taxpayer is a sole distributor of MACPAC films and deals in

supply of (i) Bopp Composite/plain films, (ii) Pet films, (iii) CPP metalized films, and (iv) CPP Milky films. The question before us is whether subject goods could be considered as "consumer goods" for end consumers and stand-alone constitutes consumer goods within the frame of Clause 22A read with (13AB) of section 2 of the Ordinance. Section 2(22A) describes the '*fast moving consumer goods*' which means the consumer goods which are supplied in "retail market as per daily demand of a consumer" (excluding durable goods)¹. The bracketed insertion was provided to the Statute via Finance Act, 2017. The consumer goods are those as defined in (13AB) of section 2 of the Ordinance, as under:

'consumer goods means goods that are consumed by the end consumer rather than used in the production of another good.'

6. It was imperative for the Tribunal and the High Court to have adjudged whether the goods by law (referred above) were Fast Moving Consumer Goods and are meant for 'direct consumption' by the end consumer rather than used in the production of another good(s) in its finished form; as only then this could have been applied for any benefit to the taxpayer. Thus, the qualification of goods under the law is the prime consideration. The respondent was dealing in the products/goods, which for convenience are described in detail as under:

1. BOPP Films:- *It is widely used for plain, lamination, matte and metalized films which are used for many different sorts selection of applications, such as carton box, flower, gift, food, confectionery, lamination, CD, DVD, VCD, cigarette, and box packaging, packing tape, etc. according to its purpose such as printing, clothes, tape and laminating which are used for many different sorts of applications.*

2. Polyester Film (PET film):- *Polyester film - (PET Film) exhibits superior strength heat resistance, and excellent insulating properties. Its unique qualities are/were applied in magnetic audio and video tape, capacitor dielectrics, packaging, and*

¹ The words inserted by Finance Act, 2017 (XXVII of 2017), (Assented on: 19th June, 2017).

batteries. Polyester Film is made from Polyethylene terephthalate by casting & Biaxially oriented.

3. CPP (Cast Polypropylene) films:- CPP (Cast Polypropylene) films can be "metalized," meaning a thin layer of metal, typically aluminum, is deposited onto the film's surface which is suitable for various packaging applications like food packaging, pharmaceuticals, and personal care products.

4. CPP milky film (opaque):- This is also known as cast polypropylene film, is a white, opaque film made from polypropylene. It's used for various applications, including packaging for food items like biscuits, confectionery, and ice cream.

7. These products are primarily used as a material for packing other products for various consumer goods and are not typically sold directly to consumers as a stand-alone product. The consumer may buy products packed in such films but would not typically purchase the aforesaid goods. Indeed aluminum foils have been described as goods for end consumers but that is not the goods under discussion.

8. We are not of the view that subject goods in their form, as described in the orders of lower fora, are utilizable predominantly by end consumers. These are not directly considered as consumer items but forms a key component for many consumer products. It is meant primarily for an industrial/commercial use. Fast Moving Consumer Goods are those which are supplied in retail market as per "their" daily demand. Hence the products do not qualify to form part of the definition provided in clause (22A) read with Clause (13AB) of Section 2 of the Ordinance. Additionally, the insertion of the phrase 'durable' which excludes such product is additionally applied for 2017 tax return. Indeed all these products described above are durable hence excluded via Finance Act, 2017.

9. For the foregoing discussions, we are of the view that the impugned judgment suffers from legal defects, which warrant interference by this

Court. Therefore, these petitions are converted into appeals and the same are allowed. The impugned judgment of the High Court dated 22.11.2023 is set aside.

Chief Justice

Judge

Judge

Announced in open Court on 24/6/25 at Karachi.

[**]

Judge

Not Approved for Reporting