

IN THE LAHORE HIGH COURT, LAHORE  
JUDICIAL DEPARTMENT

Case No. ITR No.377/2015

Commissioner of Income Tax Vs M/s Allied Marketing (Pvt.) Ltd

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of judge, and that of parties or couns, where necessary.
-------------------------------	------------------------------	--

28.04.2025 Ms. Humera Bashir Chaudhry, Advocate for the applicant.  
Mr. Ibrahim Hassan and Syeda Fatima Ali, Advocate for the respondent.

For the reasons recorded in our detailed order of even date passed in connected reference application ITR No.281 of 2012, the instant reference application is dismissed.

A copy of this order shall be sent to the Appellate Tribunal under the Seal of the Court.

*R. A.*  
(RAHEEL KAMRAN)  
JUDGE

*S. K.*  
(SHAHID KARIM,  
JUDGE

*TRUE COPY*  
Examiner (Copy Branch)  
Lahore High Court, Lahore

133728  
D-5/4/15

133728  
Lahore High Court  
Copy Branch  
Examiner (Copy Branch)

133728  
D-5/4/15  
R 8/5/15  
A 8/5/15

IN THE LAHORE HIGH COURT, LAHORE  
JUDICIAL DEPARTMENT

Case No. PTR No.281/2012

Commissioner of Income Tax Vs M/s Allied Marketing (Pvt.) Ltd.

S.No.of order/ Proceeding	Date of order/ Proceeding	Order with signature of judge, and that of parties or counsel, here necessary.
------------------------------	------------------------------	---

28.04.2025 Ms. Humera Bashir Chaudhry, Advocate for the applicant.  
Mr. Ibrahim Hassan and Syeda Fatima Ali, Advocates for the respondent.

This is a tax reference under Section 133 of the Income Tax Ordinance, 2001 ("the Ordinance"). This order shall also decide connected reference applications viz. ITR No.377 of 2015, PTR Nos.282, 283, 284 and 285 of 2012, which arise out of the same order passed by the Appellate Tribunal Inland Revenue with the only difference that these relate to different tax years. In TR No.377 of 2015 the impugned order is dated 11.02.2014 and is being decided through this common order since the Appellate Tribunal Inland Revenue relied upon its earlier orders which are under challenge in the above reference applications.

2. Two questions of law have been framed to arise out of the impugned order which are the following:

c. "Whether under the facts and in the circumstances of the case, the learned Appellate Tribunal Inland Revenue is justified to direct to charge tax u/s 113 on margin of profit earned and not on gross sales.

d. "whether under the facts and in the circumstances of the case, the learned Appellate Tribunal Inland Revenue has failed to consider the explanation of section 113, which says "turnover" means the gross receipt, exclusive of sales tax and federal excise duty or any trade discounts shown on invoices or bills, derived from the sale of goods ?" (Par No.27 & 28 of Page No.20 & 21 of the order of ATIR).

3. The only question which was determined by the Appellate Tribunal was regarding consideration of

margin of profit earned by the respondent as turnover for the purposes of section 113 of the Ordinance. Section 113 as it existed at the relevant time provided that:

**113. Minimum tax on the income of certain persons.-**

(1) This section shall apply to a resident company where, for any reason whatsoever, including the sustaining of a loss, the setting off of a loss of an other year, exemption from tax, the application of credits or rebates, or the claiming of allowances or deductions (including depreciation and amortisation deductions) allowed under this Ordinance or any other law for the time being in force, no tax is payable or paid by the person for a tax year or the tax payable or paid by the person for a tax year is less than one-half per cent of the amount representing the person's turnover from all sources for that year.

**(2) Where this section applies--**

(a) the aggregate of the person's turnover for the tax year shall be treated as the income of the person for the year chargeable to tax.

(b) the person shall pay as income tax for the tax year (instead of the actual tax payable under this Ordinance), an amount equal to one-half per cent of the person's turnover for the year; and

(c) where tax paid under sub-section (1) exceeds the actual tax payable under Part I, Division II of the First Schedule, the excess amount of tax paid shall be carried forward for adjustment against tax liability under Part I, Division II of the First Schedule of the subsequent tax year:

Provided that the amount under this clause shall be carried forward and adjusted against tax liability for five tax years immediately succeeding the tax year for which the amount was paid.

**(3) In this section, "turnover" means--**

(a) the gross receipts, exclusive of [sales tax and Federal excise duty or any trade discounts shown on invoices or bills, derived from the sale of goods;

(b) the gross fees for the rendering of services for giving benefits], including commissions;

(c) the gross receipts from the execution of contracts; and

(d) the company's share of the amounts stated above of any association of persons of which the company is a member.

4. It can be seen from a reading of section 113 above that where for any reason mentioned above no tax is payable or paid by the person for a tax year or that tax payable or paid by the person for a tax year is less than one-half percent of the amount representing person's turnover for all sources for that year then the aggregate of the person's turnover for the tax year shall be treated as the income of the person for the year chargeable to tax. There is no doubt that the respondent was being treated under the regime of minimum tax as enshrined in section 113 of the Ordinance. For the purpose of section 113 turnover means the 'gross receipts, exclusive of sales tax and federal excise duty or any trade discounts shown on invoices or bills derived from the sale of goods. The question engaged in these reference applications is regarding the nature of business being undertaken by the respondent which is admittedly distribution of products of various companies and this has been mentioned in the assessment order passed by the Assessing Officer. Therefore, the only receipts of the respondent are the margin of profit which is pre-determined and agreed through an agreement between the seller and the distributor. Clearly there is no transaction of sale or purchase of various goods but as a distributor the respondent is obliged to distribute the goods against a certain margin of profit agreed between the parties. Learned counsel for the applicant has not been able to refer to any prohibition in section 113 of the Ordinance as to why the margin of profit agreed between the respondent and the supplier of goods cannot be considered as gross receipts of the respondent. On facts the Appellate Tribunal concluded that the respondent was indeed a distributor and we are not inclined to go into that question since the factual determination has already been made by the Appellat

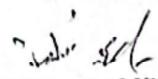


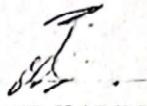
-7-

Tribunal. Further the Appellate Tribunal referred to the past history and the treatment given to the business activity of the respondent by the department itself to hold that the margin of profit earned by the respondent as a distributor was amenable to minimum tax under Section 113 of the Ordinance.

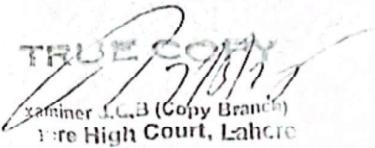
5. In view of the above, the questions of law are decided against the applicant-department and these reference applications are dismissed.

A copy of this order shall be sent to the Appellate Tribunal under the Seal of the Court.

  
(RAHEEL KAMRAN)  
JUDGE

  
(SHAHID KARIM)  
JUDGE

  
Rafiqat Ali

  
TRUE COPY  
Examiner S.C.B (Copy Branch)  
Punjab High Court, Lahore

Copy Received  
Submission Date  
16/11/13  
16/11/13  
S.S.B  
R.B/K

Section  
Date  
16/11/13  
S.S.B  
R.B/K