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**APPELLATE TRIBUNAL INLAND REVENUE OF PAKISTAN
SINGLE BENCH, MULTAN**

ITA No.999/MB/2023
Tax Year: 2021

Mr. Muhammad Asif,
Near Khawaja Iron Store, Ward No. 5,
Lodhran, Dunyapur.
Reg No: 3620112991939

...Appellant

Versus

The CIR, RTO, Bahawalpur

...Respondent

Appellant by: Mr. Muhammad Imran Ghazi, Adv
Respondent by: Mr. Muhammad Akhtar Suraj, DR

Date of Hearing: 15.01.2026
Date of Order: 27.01.2026

ORDER

MIAN ABDUL BASIT(MEMBER): Titled appeal has been filed at the instance of the appellant/taxpayer against the Impugned order dated 14.06.2023 of the Commissioner Inland Revenue (Appeals) Bahawalpur [CIR(A)], whereby the order passed under section 122(4) of the Income Tax Ordinance, 2001 (The Ordinance, 2001) was confirmed.

2. Brief facts of the case as per impugned order are that the taxpayer, an Individual, filed return declaring Income at Rs. 969,500/- for tax year 2021. The same was taken to be an assessment order u/s 120(1)(a) of the Ordinance, 2001, On the basis of a "definite information" that the taxpayer purchased Sugar from various companies amounting to Rs. 12,250,695/-, but did not declare in the income tax return showing thereby that the taxpayer concealed purchases to the tune of Rs. 12,250,695/-, the ACIR issued a show cause notice on 23.02.2022 u/s 122(9) of the Ordinance for seeking his explanation on 10.03.2022



for addition of the concealed purchases u/s 111(1)(d)(i) of the Ordinance. The taxpayer responded to the show cause notice by filing reply wherein he stated that he has revised his return on 10.03.2022 and paid turnover tax @ 0.25% u/s 113 of the Ordinance. The assessing officer partially accepted the reply and concluded the proceedings by passing the impugned order u/s 122(1) read with Section 122(5) of the Ordinance dated 25.08.2022 by charging turnover tax @ 1.5% u/s 113 of the Ordinance, penalty u/s 182 for revising return on 10.03.2022 after issuance of show cause notice dated 23.02.2022 and default surcharge u/s 205 of the Ordinance. Aggrieved by the said order, the taxpayer preferred an appeal before the learned CIR(A). Vide order dated 14.06.2023, the learned CIR(A) confirmed the assessing officer's order. Being dissatisfied with the said appellate order, the taxpayer has preferred the present second appeal before this Tribunal, giving rise to the instant proceedings.



3. On due date Mr. Muhammad Imran Ghazi, Advocate attended the proceedings on behalf of the appellant/taxpayer and Mr. Muhammad Akhtar Suraj, the learned Department Representative (DR) appeared on behalf of the respondent/department.

4. The learned AR submitted that the impugned order of the learned CIR(A) is illegal, misconceived, and contrary to the facts of the case. The learned AR contended that the learned CIR(A) erred in law by confirming the levy of tax under section 113 of the Ordinance, 2001 @ 1.50% by wrongly applying clause (24D) of Part II of the Second Schedule on the basis of non-active status under the Sales Tax Act. It was submitted that the appellant is a distributor of fast-moving consumer goods and, since the Finance Act, 2017, such distributors

are chargeable to turnover tax @ 0.25%. Hence, the higher levy based on subordinate legislation is unlawful. The learned AR further submitted that the demand created through order under section 122(4) dated 25.08.2022 was on grounds different from those mentioned in the show cause notice dated 23.02.2022, amounting to an impermissible change of mind.

5. To counter the learned AR's submissions, the learned DR supported the impugned order and submitted that the order passed by the learned CIR(A) is legal, well-reasoned, and based on correct appreciation of law and facts. The learned DR contended that the Assessing Officer rightly applied clause (24D) of Part II of the Second Schedule and correctly charged turnover tax under section 113 of the Ordinance, 2001 @ 1.50%, as the appellant was non-active under the Act during the relevant period. It was submitted that the concessional rate claimed by the appellant was not available due to non-compliance with statutory requirements. The learned DR further argued that the amendment order under section 122(4) was passed after due issuance of show cause notice and opportunity of being heard, and that the issues were properly confronted; hence, no unlawful change of mind occurred.

6. I have heard the learned representatives of both sides and carefully perused the record of the appeal file. The sole issue involved in this appeal is whether the appellant is entitled to the reduced rate of minimum tax chargeable under section 113 of the Ordinance, 2001. I find that the Ordinance, 2001 contains two separate provisions dealing with the chargeability of minimum tax at a reduced rate. These are (i) Division-IX of Part-I of the First Schedule to the Ordinance, 2001, and



(ii) clause (24D) of Part-II of the Second Schedule to the Ordinance, 2001. Division-IX of the First Schedule prescribes specific rates of minimum tax under section 113, whereas Part-II of the Second Schedule provides that incomes, classes of income, or persons or classes of persons enumerated therein shall be liable to tax at rates lower than those specified in the First Schedule. For proper appreciation of the issue, it is appropriate to reproduce both provisions as under:

Serial No. 3 of the table to Division-IX of Part-I of the First Schedule

(a) *Distributors of pharmaceutical products, fast-moving consumer goods, and cigarettes;*

(b) *Petroleum agents and distributors who are registered under the Sales Tax Act, 1990;*

(c) *Rice mills and dealers;*

(d) *Tier-1 retailers of fast-moving consumer goods who are integrated with the Board or its computerized system for real-time reporting of sales and receipts;*

(e) *Persons whose turnover arises from supplies through e-commerce, including from running an online marketplace as defined in clause (38B) of section 2;*

(f) *Persons engaged in the sale and purchase of used vehicles; and*

(g) *Flour mills*

shall pay minimum tax at the rate of 0.25% of the person's turnover.



Clause (24D) of Part-II of the Second Schedule.

The rate of minimum tax under sub-section (1) of section 113 in the case of dealers and sub-dealers of sugar, cement and edible oil shall be 0.25%, subject to the condition that the names of such dealers and sub-dealers are appearing on the active taxpayers' lists issued under the provisions of the Sales Tax Act, 1990 and the Income Tax Ordinance, 2001."

A bare reading of the above provisions shows that Division-IX of the First Schedule independently prescribes a reduced rate of minimum tax for specified categories of persons, including distributors of fast-moving consumer goods, without attaching any condition relating to active status under the Act, 1990. In contrast, clause (24D) of Part-II of the Second Schedule applies to a different class of taxpayers, namely dealers and sub-dealers of sugar, cement, and edible oil, and specifically makes the reduced rate subject to the condition of appearing on the active taxpayers' lists.

7. Accordingly, the applicability of clause (24D) of Part-II of the Second Schedule cannot be extended to cases which squarely fall under Division-IX of Part-I of the First Schedule, as the latter is the specific charging provision prescribing the rate of minimum tax under section 113 of the Ordinance, 2001 for the relevant class of persons. A careful reading of Division-IX of the First Schedule reveals that no condition has been prescribed for distributors of fast-moving consumer goods for availing the reduced rate of minimum tax. The only category in the said Division where a condition of registration under the Act, 1990 has been expressly attached is that of petroleum agents and distributors. The deliberate inclusion of such condition for petroleum agents and its omission for distributors of fast-moving consumer goods clearly indicates the legislative intent that no such requirement applies to the latter category. In the present case, it is not disputed that the appellant deals in fast-moving consumer goods. Therefore, within the clear mandate and scope of Division-IX of the First Schedule, being the charging provision of the Ordinance, 2001, the minimum tax chargeable under section 113 in the case of the



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distributors of fast-moving consumer goods cannot exceed 0.25% of the person's turnover.

8. Another aspect, which requires deliberation, is the well-settled principle of statutory interpretation that where two provisions of a taxing statute appear to govern the same subject matter and one provision is more beneficial to the taxpayer, the provision favourable to the taxpayer must be adopted and applied. This principle has consistently been recognized by the superior courts, holding that in case of ambiguity or overlap in fiscal statutes, the interpretation which leans in favour of the taxpayer should prevail. In the present case, for availing the reduced rate of minimum tax under section 113 of the Ordinance, 2001, clause (24D) of Part-II of the Second Schedule prescribes a condition of registration and active status under the Sales Tax Act, 1990. On the other hand, Division-IX of Part-I of the First Schedule, being the charging provision, grants the reduced rate of minimum tax to distributors of fast-moving consumer goods without attaching any such condition. Thus, even if both provisions are assumed to be applicable, the provision contained in Division-IX of the First Schedule is clearly more beneficial to the taxpayer. Applying the settled canon of interpretation, the provision which is favourable to the taxpayer must be given precedence. Consequently, the mandate of Division-IX of the First Schedule is required to be followed and adhered to, and the reduced rate of minimum tax under section 113 at 0.25% cannot be denied to the appellant on the basis of conditions borrowed from clause (24D) of Part-II of the Second Schedule. Reliance in this regard is placed on the judgments reported as Commissioner of Income Tax and Another VS Balochistan Concrete



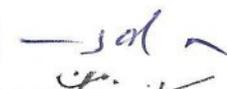
and Block Works Ltd. and Others (2017 PTD 717), Government Of Sindh Court Through Secretary And Director General, Excise And Taxation And Another Vs Muhammad Shafi And Others (2015 PLD(Sc) 380), CIT v. Naga Hills Tea Co. Ltd. (AIR 1973 SC 2524) and Sun Export Corporation v. Collector of Customs [(1997) 6 SCC 564].

9. However, the record of the case does not clearly establish whether the appellant qualifies as a *distributor* within the meaning of Division-IX of Part-I of the First Schedule to the Ordinance, 2001. The determination of this factual aspect is essential, as entitlement to the reduced rate of minimum tax under section 113 is contingent upon the status of the appellant. In the absence of a clear finding on this point, the issue requires proper verification and determination by the tax authorities on the basis of documentary evidence to be produced by the appellant. Accordingly, it would be appropriate and in the interest of justice to remand the matter to the Assessing Officer for a limited purpose, namely, to ascertain the status of the appellant as a distributor. It is, however, clarified that in case it is established, upon verification of the record, that the appellant is indeed a distributor of fast-moving consumer goods, the appellant shall be entitled to the reduced rate of minimum tax at 0.25% of turnover in terms of Division-IX of Part-I of the First Schedule to the Ordinance, 2001.

10. The appeal stands disposed of as above.

11. This order consists of seven (07) pages, and I have affixed my signature on each page.




MIAN ABDUL BASIT
Member