

**Stereo. H C J D A 38.**  
**Judgment Sheet**

**IN THE LAHORE HIGH COURT LAHORE**  
**JUDICIAL DEPARTMENT**

**Case No. ITR No. 118 of 2015.**

Commissioner Inland                      **Versus**                      M/s. Haier Pakistan (Pvt.) Ltd.  
Revenue.

**JUDGMENT**

Date of Hearing:	08.02.2018.
Applicant/ Department by:	Mr. Liaquat Ali Chaudhry, Advocate.
Respondent/ Taxpayer by:	M/s. Akhtar Ali and Sumair Saeed Ahmed, Advocates.

**Shahid Jamil Khan, J:-** This judgment shall also decide ITR No. 119 of 2015 as common legal proposition is addressed to answer the proposed question of law.

2. Facts of the instant case are that the taxpayer drove income from wholesale of household goods and filed return for tax year 2012, which was taken to be assessment order under Section 120 of the Income Tax Ordinance, 2001 (“**the Ordinance**”). Notice under Section 122(5A) was served; confronting short payment of turnover / minimum tax under Section 113 and construing the assessment order as erroneous and prejudicial to the interest of revenue. Reply to the notice was found unsatisfactory; therefore, claim of reduced rate, at 80% of normal rate, under Clause (8) of Part III of The Second Schedule, was declined through amended assessment order. Appeal against the amended assessment order was allowed by first Appellate Authority. Second appeal filed by department was rejected by Appellate Tribunal Inland Revenue (“**Appellate Tribunal**”) by holding the claim of 80% reduced rate as correct, which is assailed through this tax reference. Following question is proposed and pressed:-

“Whether on the facts and circumstances of the case, the household electronic goods can be termed as consumer goods for the purpose of clause (8) of Part III of Second Schedule while actual nature of the goods is consumer durables?”

3. Learned counsel for applicant argued that the Clause (8) was to be interpreted by employing principle of “*ejusdem generis*”. He explained that ‘*electric appliances*’ could not be read with ‘*pharmaceutical products*’, ‘*fertilizer*’ or as ‘*fast moving consumer goods*’. He placed reliance on Black’s Law Dictionary as well as definition of ‘*fast moving consumer goods*’ under Section 2(22A) of the Ordinance, which was inserted through Finance Act, 2015.

4. Learned counsel for respondent-taxpayer opposed the arguments, submitting that principle of “*ejusdem generis*” is not applicable; because the phrase “*fast moving consumer goods*”, as used in the Clause (8), is to be read in the words, “*consumer goods*”, which is inclusive in nature. It was argued that the consumer goods are the goods which are used directly by the consumers.

5. Arguments heard. Record perused.

6. It is was not disputed before the Appellate Tribunal that respondent-taxpayer was deriving income from wholesale of households and distribution of electric appliances was part of this business. Applicant department’s contention, remained throughout, that electric appliances were not fast moving consumers good, therefore, benefit of the Clause could not be extended to the respondent taxpayer.

7. The Clause (8) needs to be interpreted, therefore, is reproduced for ease of reference:-

### **“PART III**

#### **Reduction in Tax Liability**

Income, or classes of income, or classes of person, enumerated below, shall be allowed reduction in tax liability to the extent and subject to such conditions as are specified hereunder:-

- (8) For the **distributors** of pharmaceutical products, fertilizers, **consumers goods** *including fast moving consumers goods*, the rate of minimum tax on the

amount representing their annual turnover under section 113 shall be reduced by eighty percent.

[emphasis supplied]

The Clause (8) was inserted in Part-III of Second Schedule in November 2010 (through SRO 1086(I)/2010) and was omitted by Finance Act 2014. It's applicability for tax year 2012 is not in dispute. Being inserted in Part-III (Reduction in Tax Liability) of Second Schedule (Exemptions and Tax Concessions under Section 53), this clause was an exempting provision. Key words used in this Clause are “*distributor*” and “*consumers goods*”, which, being specified conditions, were required to be fulfilled, for allowing reduction in tax liability to a class of income derived from ‘*distribution of consumers goods*’.

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 used 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.

8. Definition, under Section 2(22A), of ‘*fast moving consumer goods*’ is not relevant for interpretation of the Clause (8).

This definition was inserted through Finance Act, 2015 when the Clause (8) had been omitted by Finance Act, 2014. Division IX was inserted in First Schedule through Finance Act, 2014 to set out

rates of Minimum Tax under section 113. At Sr. No.2 of the Division IX, 0.2% tax is mentioned as rate of tax for “*Distributors of pharmaceutical products, fast moving consumer goods and cigarettes;*”. After placing this phrase in a provision under First Schedule, its character has fundamentally been changed. Earlier this phrase was used in an exempting provision, syntax of which was different from the use of words in existing provision, which essentially is charging in character. Definition of the phrase “*fast moving consumer good*” given in Section 2(22A) is for an existing charging provision, therefore, cannot be attributed to an erstwhile exempting provision.

9. We are in agreement with the submission by learned counsel for the respondent-taxpayer that the canon of “*ejusdem generis*” is not applicable for interpretation of this Clause.

Meanings of these Latin words are, ‘*of the same kind or class*’. Black’s Law Dictionary defines it as, “A canon of construction that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same type as those listed.”

This tool applies to resolve the problem of giving meaning to ambiguous or unclear ‘words of phrase of general nature’, which is preceded or following by a group of words showing a list of person or things of same or similar nature and kind. Conversely; where some persons or things are expressly mention, without general word or phrase, it implies exclusion of other persons or things within same class. This canon of construction is called, ‘*Expressio unius est exclusio alterius*’ (the express mention of one thing excludes all others). Recourse to these principles of interpretation is based on presumptions adopted by courts.

Language of the Clause (8) used ‘*pharmaceutical products*’ and ‘*fertilizers*’ as specific words, which are not of same nature or kind. These words are followed by the phrase, ‘*consumers goods including*

*fast moving consumers goods*, which also has no nexus with the preceded specific words, therefore, has to be interpreted separately. The word '*including*' used in this phrase enlarges the scope of words '*consumers goods*'. Had the words '*consumers goods*' been qualified by a phrase like; 'relating to agriculture' etc., then its construction would have been restricted only to those consumers goods, which might be used for agriculture activities.

10 For what has been discussed above, our answer to the proposed question is in **affirmative**.

This reference application, along with connected reference application, is **decided** against the applicant department.

11. Office shall send a copy of this judgment under seal of the Court to the Appellate Tribunal Inland Revenue as per Section 133(5) of the Income Tax Ordinance, 2001.

**(Muhammad Sajid Mehmood Sethi)**  
Judge

**(Shahid Jamil Khan)**  
Judge

**APPROVED FOR REPORTING.**

**(Muhammad Sajid Mehmood Sethi)**  
Judge

**(Shahid Jamil Khan)**  
Judge