

Union of India & Anr. v. U.A.E. Exchange Centre

Civil Appeal No. 9775 of 2011

[2020] 4 SCR 719 | 2020-04-24

Whether the Indian liaison offices' downloading of remittance instructions, printing of cheques or drafts and dispatch to beneficiaries constituted a taxable permanent establishment, or fell within Article 5(3)(e)'s preparatory or auxiliary exclusion on the stated facts.

90 | 5 | 9(1)(i) | 2(24)

Two-judge bench | A. M. Khanwilkar, J. | Ajay Rastogi, J.

Assessment years: 2000-01, 2001-02, 2002-03, 2003-04

01 FACTS OF THE CASE

The respondent, incorporated in the UAE, provided remittance services to non-resident Indian customers in the UAE. Contracts were entered there; funds and a one-time fee of 15 dirhams were received there. Under RBI permission dated 24 September 1996, it opened Indian liaison offices, initially at Cochin and later in other cities. Their expenses were funded from abroad and they charged no Indian fee or commission (paragraphs 1-2).

Remittances operated in two ways. Telegraphic bank transfers from the UAE were not the disputed mode. For the second mode, the liaison offices accessed remittance instructions on the UAE main server, downloaded the particulars, printed cheques or drafts drawn on Indian banks and couriered or dispatched them to designated beneficiaries in India. The permitted functions also included responding to suspected-fraud enquiries, account reconciliation, communications and follow-up with correspondent banks. The record treated the activities as conforming to the RBI limits: no independent commercial activity or business contracts, no fees or remuneration in India, and no lending or borrowing without permission (paragraphs 1-2 and 8-9).

After filing NIL returns from assessment years 1998-99 through 2003-04, the company sought an advance ruling. The AAR held on 26 May 2004 that the second remittance mode completed part of the contractual undertaking and made the liaison offices a PE, with attributable income taxable in India. Four section 148 notices followed for assessment years 2000-01 to 2003-04. The Delhi High Court quashed the AAR ruling and consequential notices, while leaving Revenue free to proceed on another legally available ground. Revenue appealed (paragraphs 3-5).

Source: [reported judgment / paragraphs 1-2, including quoted RBI permission / PDF pages 5, 6, 7, 8, 9, 10 / judgment](#); [reported judgment / paragraphs 3-5, including AAR and High Court history / PDF pages 10, 11, 12, 13, 14, 15, 16, 17, 18 / judgment](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court identified the central inquiry as the character of the actual liaison-office functions. Even assuming that the domestic business-connection and income-deeming provisions could initially apply, the question had to be resolved under the India-UAE DTAA given effect through section 90. Relying on Azadi Bachao Andolan, it applied the treaty provisions governing the case rather than treating domestic business connection as sufficient by itself (paragraphs 7-8).

Article 7 permits Indian taxation of the enterprise's business profits only within the relevant PE framework. An office or fixed place could initially fall within Article 5(1) or 5(2), but Article 5(3)'s overriding exclusion still required examination. Under Article 5(3)(e), a place maintained solely for preparatory or auxiliary activities is excluded. The label liaison office was not the end of the inquiry: a functional examination of its activities was necessary (paragraph 8).

The disputed downloading, printing and dispatch functions assisted the remittance business carried on in the UAE. The Court considered them together with the restrictive RBI permission, the absence of contracting or independent commercial functions in India and the inability to charge fees or commission locally. On this record it agreed with the High Court that the activities were preparatory or auxiliary and accepted its rejection of the AAR's reasoning that the need to complete delivery alone made them a main business function. The remitter-side transactions and fee arrangements were completed in the UAE; the Indian offices performed the circumscribed supporting tasks (paragraphs 4 and 8-11).

Morgan Stanley supported a functional and factual analysis and the overriding auxiliary-activity exclusion. The Court also referred to E-Funds and reaffirmed the High Court's characterization of the particular functions. These precedent discussions concern their own treaties and facts; the operative conclusion here was the India-UAE Article 5(3)(e) exclusion for the respondent's stated activities (paragraphs 10-12).

The Court reviewed the domestic business-connection explanation, including the Finance Act, 2003 amendment, but held that even characterizing the liaison-office work as business activity would not overcome the applicable treaty exclusion. With no PE for this purpose, Article 7 did not permit the asserted Indian tax on these business profits. This is a fact- and treaty-specific result, not an exemption for every office with RBI approval or every remittance business (paragraphs 11-13).

Source: [reported judgment / paragraphs 7-8 / PDF pages 19, 20, 21, 22, 23, 24, 25, 26, 27 / judgment: reported judgment / paragraphs 9-11 / PDF pages 27, 28, 29, 30, 31 / judgment: reported judgment / paragraphs 12-13 / PDF pages 31, 32, 33, 34, 35, 36 / judgment](#)

03 JUDICIAL DECISION

The Court upheld the High Court's conclusions and dismissed Revenue's appeal without costs. The liaison offices' stated functions fell within Article 5(3)(e), so the fixed places were excluded from PE status and were not taxable under Article 7 in respect of the UAE primary business activities at issue. The High Court's quashing of the AAR ruling and the four consequential section 148 notices therefore remained effective. Its recorded liberty for Revenue to proceed on any other ground permissible in law was not converted into a direction to reassess. Pending interlocutory applications were disposed of (paragraphs 4 and 13-15).

Source: [reported judgment / paragraphs 4; 13-15 / PDF pages 18, 35, 36 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Respondent assessee, U.A.E. Exchange Centre

Revenue appeal dismissed without costs; High Court conclusions upheld; pending interlocutory applications disposed of

Treaty PE and auxiliary-activity determination on the stated liaison-office functions

The AAR ruling and four consequential notices remain quashed. The result depends on the stated actual activities and the applicable India-UAE treaty exclusion; it does not establish universal non-taxability of liaison offices or bar another legally permissible ground.

Source: [reported judgment / paragraphs 14-15 / PDF pages 36 / judgment](#)

05 AKHB REVIEW POINT

Test the functions actually performed, not merely the office's regulatory name. For a comparable claim, document where customer contracts and fees arise, who can conclude contracts, whether Indian personnel perform revenue-generating or only supporting functions, and whether actual operations stay within the RBI permission. Printing and dispatch being necessary to complete delivery did not, on this record, prevent the treaty auxiliary exclusion.

Keep domestic business connection, the treaty PE definition and any exclusion analytically separate. A regulatory licence alone is not a tax exemption, and a different operational role or treaty text may change the result. This note concerns the treaty and statutory setting examined in the 2020 judgment; subsequent treatment, treaty changes and any Income-tax Act, 2025 application remain unverified.

Source: [reported judgment / paragraphs 8-13 / PDF pages 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 / judgment](#)

ADDITIONAL STATUTORY CONTEXT, NOT SEPARATE HOLDINGS

2(13); 4; 139; 148; 245Q(1); 92F

PROVISION-SPECIFIC SCOPE

1.

Act: Income-tax Act, 1961

Section: 90

Role: treaty implementation and controlling framework

Basis: The India-UAE DTAA governs the PE/business-profits question on these facts.

2.

Act: Income-tax Act, 1961

Section: 5; 9(1)(i); 2(24)

Role: income and business-connection context

Basis: Domestic deeming provisions do not displace the applicable treaty exclusion for these auxiliary activities.

3.

Act: Income-tax Act, 1961

Section: 148; 245Q(1)

Role: procedural posture

Basis: Challenge to an advance ruling and four consequential reopening notices.

4.

Act: Income-tax Act, 1961

Section: 2(13); 4; 139

Role: statutory background

Basis: Business definition, charge and return history appear in the discussion.

5.

Act: Income-tax Act, 1961

Section: 92F

Role: quoted precedent context

Basis: Discussed in the Morgan Stanley quotation, not a transfer-pricing issue independently decided here.

6.

Act: India-UAE Double Taxation Avoidance Agreement

Section: Articles 5(1), 5(2), 5(3)(e) and 7

Role: principal treaty provisions

Basis: Fixed-place PE inquiry, preparatory or auxiliary exclusion and business profits.

7.

Act: Foreign Exchange Regulation Act, 1973

Section: 29(1)(a)

Role: regulatory permission and factual limits

Basis: The RBI permission defined the liaison offices' permitted functions; treaty characterization also depended on the stated actual activities.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

A. M. Khanwilkar, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

TREATY PROVISIONS AND THEIR SCOPE

India-UAE DTAA Article 5(1); India-UAE DTAA Article 5(2); India-UAE DTAA Article 5(3)(e); India-UAE DTAA Article 7

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(reported judgment\)](#)

Identified source rendition: 36 PDF pages; SHA-256 aca6b717a247a6199aece134d16b4babfa49b2dcacd8c6f707f655c92f5b1d11. Original bytes preserved. Editorial headnote and case references precede the judgment. Judicial paragraphs 1-15 run from physical page 5 through 36; no neighbouring judgment forms part of the reviewed text.

[Open cited source rendition](#)

The source cover restores U.A.E. and the additional appellant omitted from catalogue wording.

The review rests on the complete reported judicial text. The discovered official-original candidate was not available as a verified PDF binary and is not presented as a checked source.

The initial AAR finding of a PE is reversed, not adopted as the Supreme Court outcome.

RBI permission is part of the factual analysis and does not itself confer a blanket tax exemption.

No subsequent-treatment or treaty-amendment verification.

Reported citation verified on the source cover. No neutral citation is inferred from catalogue metadata.

Paragraph 4 identifies these four years for the section 148 notices consequential to the AAR ruling.

Paragraph 3 separately records NIL returns from assessment years 1998-99 through 2003-04; that background is not treated as six notices or six separately decided assessments.

STATUTORY SCOPE

India-UAE DTAA Articles 5 and 7 as reproduced and applied in the judgment, with section 90 and the historical domestic business-connection context; no comprehensive later treaty or statutory amendment audit.

No automatic Income-tax Act, 2025 mapping or current-law or later-treatment certification.

LATER TREATMENT

Source checked 2026-10-04. Subsequent judicial treatment and statutory or treaty amendments have not been comprehensively verified.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF pages: 36](#)

SHA-256: aca6b717a247a6199aece134d16b4babfa49b2dcacd8c6f707f655c92f5b1d11

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