GOVERNMENT OF PAKISTAN
REVENUE DIVISION
FEDERAL BOARD OF REVENUE
*****

Subject: **IMPORTANT DECISION OF LEARNED APPELLATE TRIBUNAL INLAND REVENUE IN CASE OF MR. NASEER ALI KHAN VS CIR (AEOI ZONE), LTO, ISLAMABAD**

I am directed to refer to the subject and share the judgement of Learned ATIR in the case of Mr. Naseer Ali Khan Vs Commissioner IR (Zone-AEOI), Islamabad in I.T.A No.1524/IB/2021 Tax Year 2017.

2. It is requested that the judgment may be circulated in the field formations for necessary utilization in like cases.

Encl: As Above

(Imran Latif Minhas)
Chief (Legal-IR-I)

Member (IR-Operations), Federal Board of Revenue, Islamabad
Legal Wing's U.O No.1(8)Appeals/2020 Vol-III 114383-R Dated: 20.07.2023

Copy for information to:

1. Member (IR-Policy), FBR, Islamabad.
2. Chief (PR), FBR Islamabad for uploading on the website of FBR

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OFFICE OF THE
COMMISSIONER INLAND REVENUE
(APPEALS-I), KARACHI
32-A, PRC Towers, Lalazar Drive, M.T. Khan Road, Karachi
Tele # 99210338

No. CIR/Appeals-I/2023/06 Dated: 06.07.2023

The Secretary (Appeals),
Revenue Division,
Federal Board of Revenue
Islamabad

999/C

Sub: **CIRCULATION OF MODEL APPELLATE ORDERS**

Please refer to Board's letter C.No.1(08)Appeals/2020 Vol-III dated: 26.06.2023 on the subject cited above.

2. In compliance with the directions as contained in above referred to letter, please find enclosed herewith copy of ATIR Judgement in ITA No. 1524/IB/2021, (Tax Year 2017) dated: 07.11.2022 for your kind perusal and further necessary action in this regard.

3. Further, it is to apprise you that the second appeal has been filed in the case of Mr. Asif Inam by the appellant but not yet decided by the ATIR.

(ABDUL HAMEED SHAIKH)
COMMISSIONER INLAND REVENUE
APPEALS-I, KARACHI

11/7/23

2022 SLD 2132 Equiv. Citation: = = =

APPELLATE TRIBUNAL INLAND REVENUE, DIVISION BENCH-I, ISLAMABAD

I.T.A. No. 1524/IB/2021 (Tax Year 2017), date of Hearing: 06.10.2022 and date of Order: 07.11.2022

PRESENT:
M. M. AKRAM, JUDICIAL MEMBER
MUHAMMAD IMTIAZ, ACCOUNTANT MEMBER

PETITIONER(S): MR. NASEER ALI KHAN, 44 K, BLOCK VI, PECHS, KARACHI EAST
VS
RESPONDENT(S): COMMISSIONER INLAND REVENUE (ZONE-AEOI), LTU, ISLAMABAD.

Petitioner(s) by: Mr. Waseem Akhtar, ACMA
Respondent(s) by: Rao Shahzad, DR

Law: Income Tax Ordinance (XLIX of 2001)
Sections: 120(1)(b), 122(1), 177(6), 214D

ORDER:
M. M. AKRAM (Judicial Member):---.---

The titled appeal has been filed by the appellant taxpayer against the Order-in-Appeal No.41/2021 dated 10.08.2021 passed by the learned Commissioner Inland Revenue (Appeals-I), Islamabad for the Tax Year 2017 on the grounds as set forth in the memo of appeal.

2. Brief facts giving rise to the appeal are that the appellant taxpayer is an individual who derives income from salary and foreign source immovable property income. Income tax return for the period under consideration was e-filed on 06.06.2018 declaring salary income of Rs.12,169,200/- and foreign immovable property income of Rs.5,083,722/ which constituted a deemed assessment order in terms of section 120(1)(b) of the Income Tax Ordinance, 2001 ("the Ordinance"). The wealth statement as of 30.09.2018 was also e-filed with the return of income declaring total assets therein at Rs.55,077,616/-. Subsequently, the case was selected for audit under section 214D of the Ordinance, and intimation in this regard was issued by the concerned Commissioner on 15.11.2018. Thereafter, an Information Document request under section 177(1) of the Ordinance was issued to the taxpayer through IRIS. Subsequently, the case of the appellant was transferred to the AEOI Zone, Islamabad. Information Document Request was once again issued to the appellant vide letter dated 16.12.2020 wherein the appellant was requested to furnish various details, documents, and other related information about the declaration made in the Income Tax return filed by the appellant for the Tax Year 2017. The appellant filed a reply along with certain documentation on 25.12.2020. After examining the same, notice under section 177(6) of the Ordinance was issued to the taxpayer on 06.01.2021. After considering the reply/rebuttal of the appellant order under section 122(1) of the Ordinance was passed on 29.01.2021 wherein add-back on account of foreign property income was made to the tune of Rs.5.083,722/- and tax payable determined at

Rs.1,461,906/-. Being aggrieved, the appellant filed an appeal before the learned Commissioner Inland Revenue (Appeals-I), Islamabad who decided the appeal of the appellant taxpayer vide Appeal No.41/2021 dated 10.08.2021. Aggrieved with this order, the taxpayer has preferred an appeal before this forum and assailed the impugned order on a number of grounds.

3. This case came up for hearing on 06.10.2022. The learned AR appearing on behalf of the appellant submits that there is no dispute that the appellant is a resident person and the immovable property in question is situated in Dubai, UAE and rental income is derived from that property. The learned AR drawing force from Paragraph 1 of Article 6 of the Double Taxation Avoidance Agreement (for short "DTAA") between the Government of the Islamic Republic of Pakistan and the Government of the United Arab Emirates (UAE), tried to impress upon that as the income derived by a resident of a contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State, may be taxed in that other State, therefore, the rental income of the property owned by the appellant at Dubai could not be brought to tax in Pakistan. It was submitted by the AR that the expression "may be taxed in" means "shall be taxed only in" a particular State as per the interpretation accorded to the same by different courts. The learned AR taking support of various judicial pronouncements submitted that Article 6(1) of the Pakistan-UAE tax treaty vested an exclusive taxing right with the State of source and the State of residence was not empowered to levy any tax, even if the State of source did not exercise its power to levy tax. The AR in support of his aforesaid claim submitted that neither Article 6(1) nor protocol to the tax treaty expressly recognized the right of the State of residence of the owner to tax income from immovable property situated in the State of the source. It was thus the claim of the AR that the income from an immovable property could be taxed only in the State of the source. Further, it was submitted that after the Treaty was signed by the two countries the Ordinance could no longer be the law governing the taxability of such income in the two countries but only the Treaty governs such taxability and thus the provisions of section 4, 10, 11 and 15 of the Ordinance could no longer be looked into for this purpose. Concerning Article 6(1) of the Treaty regarding taxability of income tax from immovable properties, it is urged on behalf of the appellant that the word 'may' would also mean in that context 'must' or 'shall' because the situs of the property has to be considered and if the situs of the property is situated in Dubai, U.A.E, the income from the property can be assessed to tax only in that country and again under the provisions of the Treaty in question, such income cannot be included in the total income in Pakistan. Further, clause 3 of Article 6 refers to income derived from the direct use, letting, or use in any other form of immovable property. The importance of Article 24(2) of the Treaty is that it applies to income arising to a taxpayer other than those mentioned in Articles 6, 14(1), and 17 of the Treaty and also a situation where any income that has not been referred to therein become taxable in either country at a much later date. He further urged that Article 24(2) will apply only when taxes are payable under the laws of the U.A.E; that even for granting the tax credit, the proof of tax paid in the U.A.E has to be furnished and it would thus be similarly necessary to furnish such proof of tax paid in U.A.E even for the purpose of Article 24(2) of the Treaty; that to avoid conflicts of interest, the Treaty between Pakistan and U.A.E was signed and under the Articles of the Treaty, the income arising in U.A.E has to be totally excluded while computing the income in Pakistan, subject to the conditions prescribed therein. The appellant in the backdrop of his aforesaid submissions tried to persuade that the rental income from the property owned by him in UAE could not be brought to tax in Pakistan and therefore, rightly claimed exempt income in the return.

4. On the contrary, the learned DR explained verbally and in written arguments that DTAA has two primary objectives one is the Avoidance of Double Taxation, and the other

prevention of tax evasion and avoidance (Fiscal Evasion). For these objectives, a DTAA divides the right of taxation between the Contracting States, to avoid differences, to ensure certainty in tax matters, to avoid double taxation (juridical or economic), and to prevent evasion of taxation including double non-taxation. Whilst some provisions of a DTAA (e.g. article on the elimination of double taxation are clearly intended to affect how a Contracting State taxes its own residents, the object of the majority of the provisions of a DTAA is to restrict the right of a Contracting State to tax residents of the other Contracting State. Therefore, the taxation of residents of a Contracting State is largely governed by the domestic law of that State. The US has long included this saving clause in its treaties which is also included as Article 11 in OECD Multilateral Convention to Implement Tax Treaty Measures to Prevent Base Erosion Profit Shifting (BEPS). Pakistan and UAE both are signatories to this Convention. He asserted that this general principle that a DTAA does not restrict a Contracting State's right to tax its own residents (except where this is intended), has found a categorical expression in Paragraph 3 of Article 1 of OECD as well as UN Model Tax Conventions, which reads as under:

"3. This Convention shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under [paragraph 3 of Article 71, paragraph 2 of Article 9 and Articles 19, 20, 23 A (23 B], 24 and 25 A [25 B] and 28."

The learned DR submits that the above Paragraph 3 lists the provisions with respect to which that principle is not applicable and it clearly does not cover Article 6. Further argued that taxation of property income is dealt with in Article 6 of the DTAA, which gives a primary right of taxation of property income to source State or State of situs by using the word "May". In this case, Resident State has the secondary right of taxation, subject to DTAA obligations under Article 24 of the DTAA to avoid double taxation by giving credit of tax paid in the Source State against said income. According to him once it is clear that DTAA does not prevent taxation of property income by the resident State, in this case, Pakistan; the provision of section 11(5) of the Ordinance allows to tax of the foreign source income of a resident person. The learned DR urged that an agreement can give different types of reliefs either by way of 'avoidance' or by way of 'credit' to eliminate double taxation; that 'credit' method, as well as the 'avoidance' method, will have to be decided with reference to the provisions in the agreement; that wherever the expression used in the treaty is "income shall be taxable only in" or "shall not be taxed in" or "shall be exempt from tax in", what is contemplated is the avoidance method; that, on the other hand, whenever the expression used is "income may be taxed" what is contemplated is the relief or the credit method; that Article 24(2) of the U.A.E Treaty also indicates that the said Treaty contemplated the credit method. He submitted that Article 24(2) is not a residuary Article in respect of forms of income not otherwise specified in the Treaty; that whenever it was intended that there should be a residuary clause, it has been specifically so provided in various other Treaties, most Treaties, including the OEDC Model Treaty and the U.A.E Treaty, have specific residuary clauses in addition to the Article 24(2) where it is stated that subject to the provisions of paragraph 2 of Article 24 items of income of a resident of a Contracting State, wherever, arising, which are not expressly dealt with the foregoing Articles of this Convention, shall be taxable only in that Contracting State. Therefore, he submitted that if the said Article 24(2) was meant to operate as a residuary clause covering heads of income not specifically mentioned, there was no need for such a specific Article in the other Treaties; that Article 24(2) of the U.A.E Treaty itself makes it clear that it applies only when tax is payable "in accordance with the provisions of this Agreement" which means it applies only where tax is payable in accordance with or is relatable to one of the Articles of the Agreement. He refuted the contention that the Treaty would be meaningless and would serve no purpose since this contention overlooks the basic fact that the taxpayer can seek relief only if he provides that he had paid tax in the other country and on the other hand, under Article 24(2) of the Treaty relief is available whenever a tax is payable under the laws of U.A.E. Thus, the State of which the taxpayer is a resident has inherent jurisdiction to tax the taxpayer's income from property situated in another State. However, since it is generally recognized that the State of source in respect of the immovable property has a closer economic connection with the income from that property, the Treaties generally provide that tax which may be imposed by the State of source in respect of such property and shall be allowed be as a credit in the State of residence; that it needs to be emphasized that there is no bar under the international law for the State of residence to impose a tax on income from property situated in another State and whether there is such a bar under the Treaty depends upon the correct interpretation of its provisions. The DR further contended that the Treaty does not confer power on any State to levy tax because the power to tax is derived from the domestic law of the respective States including the power to tax the global income of a resident; thus; in the absence of clear bar or exclusion of jurisdiction to levy tax by virtue of the Treaty tax can always be imposed by either State under its domestic laws and bar or embargo on the jurisdiction of a country to levy tax has to be express and cannot be read into a Treat by implication; that, moreover, when a Treaty specifically employees different expressions such as "shall only be taxable" and "may be taxed" such expressions will necessarily have to be given different meanings. For the foregoing reasons, the learned DR contended that the leaned CIR(A) has rightly dismissed the appeal of the appellant and passed a speaking order. There is no infirmity in the impugned order, he, therefore, pleaded that the appeal be dismissed.

5. We have considered the rival submissions as well as the relevant material on record. The admitted facts are that the appellant is a resident of Pakistan and received the rental income from the immovable property situated in Dubai, U.A.E. There is also no dispute that as per the domestic law, the appellant taxpayer is liable to pay tax on its entire global income. In view of the foregoing facts, the following question arises in view of Article 6(1) of the DTAA for our consideration:-

Whether the rental income from immovable property situated in Dubai, U.A.E could be subjected to tax in Pakistan based on the agreement of avoidance of double taxation entered into between the Government of Pakistan and the Government of U.A.E?

For proper appreciation of the above question, the relevant provisions of the Ordinance and paragraph of Article 6(1) of the DTAA of Pakistan-UAE are reproduced below:-

"Income from Immovable Property: Article 6(1). Income derived by a resident of a Contracting State from immovable property (including income from agricultural or forestry) situated in the other Contracting State may be taxed in that other State." (Emphasis supplied)

Section 4. Tax on taxable income.— (1) Subject to this Ordinance, income tax shall be imposed for each tax year, at the rate or rates specified in Division I or II of Part I of the First Schedule, as the case may be, on every person who has taxable income for the year.

(2) ....

(3) Where a taxpayer is allowed more than one tax credit for a tax year, the credits shall be applied in the following order –

(a) any foreign tax credit allowed under section 103; then
(b) any tax credit allowed under Part X of Chapter III; and then

(c) any tax credit allowed under sections 147 and 168.

....

Section 9. Taxable income.—The taxable income of a person for a tax year shall be the total income under clause (a) of section 10 of the person for the year reduced (but not below zero) by the total of any deductible allowances under Part IX of this Chapter of the person for the year.

Section 10. Total Income.— The total income of a person for a tax year shall be the sum of the —

· person's income under all heads of income for the year; and
· person's income exempt from tax under any of the provisions of this Ordinance.

Section 11. Heads of income.— (1)................

....

(5) The income of a resident person under a head of income shall be computed by taking into account amounts that are Pakistan-source income and amounts that are foreign-source income.

Section 103. Foreign tax credit.— (1) Where a resident taxpayer derives foreign source income chargeable to tax under this Ordinance in respect of which the taxpayer has paid foreign income tax, the taxpayer shall be allowed a tax credit of an amount equal to the lesser of -

(a) the foreign income tax paid; or
(b) the Pakistan tax payable in respect of the income."
(Emphasis supplied)

Before we embark upon the examination of contentions raised in the instant case and give an answer to the above question, we shall briefly notice the legal position regarding the provisions relating to double taxation and the relief granted therein.

6. The traditional view about the concept of "double taxation" is that to constitute double taxation, objectionable or prohibited, the two or more taxes must be (1) imposed on the same property, (2) by the same State or Government, (3) during the same taxing period, and (4) for the same purpose. There is no double taxation strictly speaking where (a) the taxes are imposed by different States, (b) one of the impositions is not a tax, (c) one tax is against property,and the other is not a property tax or (d) the double taxation is indirect rather than direct. But we have travelled very far from this stage as the Pakistan law on taxation has developed in this regard. Section 107 of the Income Tax Ordinance, 2001 (hereinafter referred to as 'the Ordinance') provides for an "Agreement with foreign countries". Where liability to tax arises under the local enactment provisions of section 4 (Charging provision), section 10 (Total income), and section 11(5) of the Ordinance provide for taxation of global income of a taxpayer chargeable to tax thereunder is subject to the provisions of an agreement entered into between the Federal Government and Government of a foreign country for the avoidance of double taxation as envisaged under section 107 of the Ordinance to the contrary, if any, and such an agreement will act as an exception to or modification of section 4, 5 and 11 of the Ordinance. The provisions of such an agreement cannot fasten a tax liability where the liability is not imposed by a local

enactment. Where tax liability is imposed by the Ordinance, the agreement may be resorted to either for reducing the tax liability or altogether avoiding the tax liability. Section 107 of the Ordinance provides the statutory gateway through which a double taxation treaty is given effect in municipal law. Subsection (2) provides that a duly notified double taxation treaty has overriding effect insofar as its terms deal with or provide for any of the matters enumerated in clauses (a) to (e) thereof. Now it is normally said that in case there is a conflict between a provision of a double taxation treaty and a section of the Ordinance, it is the former that will prevail. Reliance may also be placed on the case titled CIR v. Geogizkya Krakow Pakistan Limited, (2017 SCMR 140). The august Supreme Court has maintained in the said case that treaties for the avoidance of double taxation have to be given preference and would prevail over the provisions of the income tax law. It was further held that in view of the preferential status of such treaties, the levy of any tax under the income tax law would be subject thereto. A similar view has also been taken by the Hon'ble Sindh High Court in the case titled A. P. Moller Maersk and others Vs The Commissioner Inland Revenue and others, (2020 PTD 1614).

7. Now, we turn to the question and shall first deal with the argument advanced on behalf of the parties. The perusal of para 1 of Article 6 of DTAA which is relevant for disposal of this appeal shows that inter alia the income derived from immovable property situated in the other Contracting State may be taxed in that other State. The Revenue Department contends that the expression "may be taxed" in para 1 in Article 6 ibid gives only an option to the other Contracting State to tax the income but it does not preclude the Contracting State of residence to assess the said income. According to the learned DR, this contention finds support from the provisions of Article 24 which provides relief with reference to tax paid or deducted at source in the source State. On the other hand, the contention of the learned AR appearing on behalf of the appellant is that such expression authorizes only the Contracting State of the source to tax such income and by necessary implication, the Contracting State of residence is precluded from taxing such income. Reliance was placed on Commissioner of Income Tax vs R.M. Muthaiah, (1992) 202 ITR 508 (Karnataka H.C).

8. After giving our due consideration to the above rival contentions, we are of the humble view that in the sphere of international taxation, there are two fundamental systems of taxation, one is based on the residency of the taxpayer and the other is based on the source of the income. In the international arena, most countries follow the residency-based taxation system. According to this system, a country can tax its residents on the global income of the taxpayer while non-residents are taxed only on the income sourced inside the country. The provisions of section 10 read with section 11 of the Ordinance as enumerated above give a scope of the total income of the taxpayer who is a resident of Pakistan. As per these provisions, the income of the resident taxable in Pakistan includes all income from whatever source derived which is received or is deemed to be received in Pakistan in such year by or on behalf of such person or accrues or arises or is deemed to accrue or arise in Pakistan during such year or accrues or arises to him outside Pakistan during such year. Thus, the scope of the total income in the case of a resident also extended to the income that accrues or arises to him outside Pakistan during such a year. Under the source-based system, a country can tax a person whether resident or non-resident, only on income sourced inside the country. Had all the countries in the world followed a source-based taxation system then the problem of double taxation would not have arisen. However, under the resident-based system, there arises a situation of double taxation because in countries where the taxpayer is a resident then it will have to pay tax on its global income. To avoid double taxation, two rules are devised in the DTAAs, i.e., one is by way of providing Distributive Rules under which taxing rights are allocated between contracting States with respect to various kinds of income; and the second rule is to put the State of residence under an obligation to give either credit for taxes paid in the

source State or to exempt the income which is taxed in the source State. These two rules have also been explained in para 19 of the OECD Commentary which reads as under: -

"19. For the purpose of eliminating double taxation, the Convention establishes two categories of rules. First, Articles 6 to 21 determine, with regard to different classes of Income, the respective rights to tax of the State of source or situs and of the State of residence, and Article 22 does the same with regard to capital. In the case of a number of items of income and capital, an exclusive right to tax is conferred on one of the Contracting States. The other Contracting State is thereby prevented from taxing those items and double taxation is avoided. As a rule, this exclusive right to tax is conferred on the State of residence. In the case of other items of income and capital, the right to tax is not an exclusive one. As regards two classes of income (dividends and interest), although both States are given the right to tax, the amount of tax that may be imposed in the State of the source is limited. Second, insofar as these provisions confer on the State of source or situs a full or limited right to tax, the State of residence must allow relief so as to avoid double taxation; this is the purpose of Articles 23 A and 23 B. The Convention leaves it to the Contracting States to choose between two methods of relief, i.e. the exemption method and the credit method."

The taxation law in Pakistan follows the credit method for relieving the burden of double taxation. Under the Distributive Rules, the taxing rights are distributed between the contracting States. Exclusive rights to taxation in respect of certain incomes are given to one State and thus the other State is precluded from taxing those incomes and therefore double taxation is avoided. As a rule, such exclusive rights are given to the State of residence. In respect of the other types of income, the right to tax is not an exclusive one. The other State may also tax that income and depending upon the taxing rights of the source State, income is classified into three categories and such classifications are provided in para 20 to 23 of the OECD Commentary which read as under:-

20. Income and capital may be classified into three classes, depending on the treatment applicable to each class in the State of source or situs:

* Income and capital that may be taxed without any limitation in the State of source or situs,
* Income that may be subjected to limited taxation in the State of source, and
* Income and capital that may not be taxed in the State of source or situs.

21. The following are the classes of income and capital that may be taxed without any limitation in the State of source or situs:

* Income from immovable property situated in that State (including income from agriculture or forestry), gains from the alienation of such property, and capital representing it (Article 6 and paragraph 1 of Articles 13 and 22);

* Profits of a permanent establishment situated in that State, gains from the alienation of such a permanent establishment, and capital representing movable property forming part of the business property of such a permanent establishment (Article 7 and paragraph 2 of Articles 13 and 22); an exception is made, however, if the permanent establishment is maintained for the purposes of international shipping, inland waterways transport, and international air transport (cf. paragraph 23 below);

* Income from the activities of artistes and sportsmen exercised in that State, irrespective of whether the such income accrues to the artiste or sportsman himself or to another

person (Article 17);

* Directors' fees paid by a company that is a resident of that State (Article 16);

* Remuneration in respect of an employment in the private sector, exercised in that State, unless the employee is present therein for a period not exceeding 183 days in any twelve-month period commencing or ending in the fiscal year concerned and certain conditions are met, and remuneration in respect of an employment exercised aboard a ship or aircraft operated internationally or aboard a boat if the place of effective management of the enterprise is situated in that State (Article 15);

* Subject to certain conditions, remuneration and pensions paid in respect of government service (Article 19).

22. The following are the classes of income that may be subjected to limited taxation in the State of source:

* dividends: provided the holding in respect of which the dividends are paid is not effectively connected with a permanent establishment in the State of source, that State must limit its tax to 5 percent of the gross amount of the dividends, where the beneficial owner is a company that holds directly at least 25 percent of the capital of the company paying the dividends, and to 15 percent of their gross amount in other cases (Article 10);

* Interest: subject to the same proviso as in the case of dividends, the State of the source must limit its tax to 10 percent of the gross amount of the interest, except for any interest in excess of a normal amount (Article 11).

23. Other items of income or capital may not be taxed in the State of source or situs; as a rule, they are taxable only in the State of residence of the taxpayer. This applies, for example, to royalties (Article 12), gains from the alienation of shares or securities (paragraph 5 of Article B), private sector pensions (Article 18), payments received by a student for the purposes of his education or training (Article 20), and capital represented by shares or securities (paragraph 4 of Article 22). Profits from the operation of ships or aircraft in international traffic or of boats engaged in inland waterways transport, gains from the alienation of such ships, boats, or aircraft, and capital represented by them, are taxable only in the State in which the place of effective management of the enterprise is situated (Article 8 and paragraph 3 of Articles 13 and 22). Business profits that are not attributable to a permanent establishment in the State of the source are taxable only in the State of residence (paragraph 1 of Article 7).

The Distributive Rules uses the word "shall be taxed only", "may be taxed" and "may also be taxed". Thus, if a contracting State is to give an exclusive right to tax a particular kind of income, then a relevant article of convention uses the phrase "shall be taxed only". As a rule, such an exclusive right is given to the State of residence, though there are a few articles where the exclusive right to tax is given to the State of the source. The phrase "shall be taxed only" precludes another contracting State from taxing that income. In the cases, where the distribution of the right to tax is not exclusive, the convention uses the phrase "may be taxed". In such a Model of Convention, the use of the phrase "may be taxed" does not give the exclusive right of taxation to the State of residence. As per this Model of Convention, the word "may be taxed" and "may also be taxed" gives simultaneous taxing rights to the State of the source. If in the DTAA, an item of income "may be taxed" in the State of source and nothing is mentioned about taxing the right of the State of residence in the convention itself, then the State of residence is not precluded from taxing such income and can tax such income using the inherent right of the State of residence to tax such global income of its resident. Only in the case of the phrase "shall be taxed only" used, then only the State of residence is precluded from taxing it. In such cases, where the phrase "may be taxed" is used, the State of residence has been given its inherent right to tax. In the instant case, the claim of the taxpayer is for the rental income in a foreign country i.e. UAE and it should not be taxed in Pakistan, cannot be accepted as the phrase used is "may be taxed" and in such cases, the State of residence has inherent power to tax such income which has been clearly provided in the DTAA itself. Domestic law also provides for taxing such income. Therefore, there is no contradiction between the provisions of the DTAA and the Ordinance. As we have already stated above, Pakistan has not waived all the rights to tax under Article 6 of the relevant DTAA which provides that Pakistan shall give credit to the taxes paid in the country of source.

9. Further, in addition to the above, an agreement can give different types of reliefs either by way of 'avoidance' or by way of 'credit' to eliminate double taxation; that 'credit' method, as well as 'avoidance' method, will have to be decided with reference to the provisions in the agreement; that wherever the expression used in the treaty is "income shall be taxable only in" or "shall not be taxed in" or "shall be exempt from tax in", what is contemplated is the avoidance method; that, on the other hand, whenever the expression used is "income may be taxed" what is contemplated is the relief or the credit method; that Article 24(2) of the Pakistan-UAE Treaty also indicates that the said Treaty contemplated the credit method. Article 24(2) is not a residuary Article in respect of forms of income not otherwise specified in the Treaty; whenever it was intended that there should be a residuary clause, it has been specifically so provided in various other Treaties, most Treaties, including the OEDC Model Treaty and the Pakistan-UAE Treaty, have specific residuary clauses in addition to the Article 24(2) where it is stated that subject to the provisions of paragraph 2 of Article 24 items of income of a resident of a Contracting State, wherever, arising, which are not expressly dealt with the foregoing articles of this Convention, shall be taxable only in that Contracting State. Therefore, if the said Article 24(2) was meant to operate as a residuary clause covering heads of income not specifically mentioned, there was no need for such a specific Article in the other Treaties; that Article 24(2) of the Pakistan-UAE Treaty itself makes it clear that it applies only when tax is payable "in accordance with the provisions of this Agreement" which means it applies only where tax is payable in accordance with or is relatable to one of the Articles of the Agreement. Otherwise, the Treaty would be meaningless and would serve no purpose since this contention of the learned AR for the appellant overlooks the basic fact that under section 107 read with section 103(1) of the Ordinance, the taxpayer can seek relief only if he provides that he had paid tax in the other country and on the other hand, under Article 24(2) of the Treaty relief is available whenever a tax is payable under the laws of UAE. The words "tax actually paid" and "tax payable" are two different concepts recognized by the Courts. Under the principles of international law, the fiscal jurisdiction of a State to tax any form of income generally arises from either the location of the source of income within its territory or by virtue of the residence of the taxpayer within its territory. However, in contrast to the State where income is sourced, the country is residence is entitled to tax the taxpayer on its global income, and in other words, the taxpayer is subject to unlimited liability in the State of residence. Thus, the State of which the taxpayer is a resident has inherent jurisdiction to tax the taxpayer's income from property situated in another State. However, since it is generally recognised that the State of source in respect of the immovable property has a closer economic connection with the income from that property, the Treaties generally provide that tax which may be imposed by the State of source in respect of such property and shall be allowed be as a credit in the State of residence. However, it needs to be emphasized that there is no bar under international law for the State of residence to impose a tax on income from property situated in another State.

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10. For what has been discussed above, we are of the considered opinion that there is no bar under the law for the State of residence to impose a tax on income from property situated in another State. Thus, the answer to the above question is in the affirmative, against the appellant taxpayer.

11. As a result, the appeal of the appellant is rejected.

12. This order consists of (18) pages and each page bear my signature.

Sd/-
(M. M. AKRAM)
JUDICIAL MEMBER

Sd/-
(MUHAMMAD IMTIAZ)
ACCOUNTANT MEMBER