

Principal Commissioner of Income Tax-10 v. M/s Krishak Bharti Cooperative Ltd.

Civil Appeal No. 836 of 2018 / Civil Appeal No. 3369 of 2019 / Civil Appeal No. 2256 of 2018 / Civil Appeal No. 5900 of 2023 / Civil Appeal No. 5902 of 2023 / Civil Appeal No. 5901 of 2023
[2023] 12 S.C.R. 590; 2023 INSC 834 | 2023-09-15

Whether the assessee was entitled in India to treaty tax-sparing credit for Omani tax that would have been payable on its OMIFCO dividend but for the Omani development-incentive exemption, and whether the Revenue's objections concerning the permanent establishment and the Omani clarification letter defeated that entitlement.

90 | 263

Two-judge bench | B. V. Nagarathna, J. | Prashant Kumar Mishra, J.

Assessment years: See the source-scope notes; no year inferred.

01 FACTS OF THE CASE

Krishak Bharti, an Indian multi-State cooperative society manufacturing fertilizers, held a 25% interest in Oman Fertilizer Company SAOC (OMIFCO), a joint venture with Oman Oil Company. It maintained an Oman establishment, separate accounts and Omani income-tax returns. In the Indian assessment, the Assessing Officer included the dividend income in chargeable income but allowed credit for Omani tax that would have been payable absent the exemption introduced under Omani law from tax year 2000. The PCIT invoked section 263, disputing entitlement under section 90 and Article 25(4) of the India-Oman DTAA. The Tribunal set aside the revision order as without jurisdiction, and the Delhi High Court upheld the tax credit. The Revenue pursued six connected appeals before the Supreme Court.

Source: [reported judgment](#) / [paragraphs 3-8](#) / [PDF pages 3, 4](#) / [judgment](#)

02 DISCUSSION BY THE HON'BLE COURT

Article 25(2) provides Indian credit for Omani income tax on income that may be taxed there, subject to the treaty limit linked to the Indian tax attributable to that income. Article 25(4) treats tax that would have been payable but for a development-promoting incentive as tax payable. The Court read those provisions with Articles 7 and 11 and Omani Articles 8 and 8(bis): dividend income otherwise fell within the Omani charge but was exempted by Article 8(bis). The Omani Ministry of Finance's 11 December 2000 letter explained that the exemption aimed to attract investment and promote economic development, including by removing a disincentive to investment in tax-exempt companies. The Court accepted that explanation and the assessee's qualifying investment. It also relied on Omani assessment treatment recognising the establishment as a PE and connecting the dividend with its investment; that status had been accepted from inception through 2011, with no demonstrated reason to reject it suddenly. The letter was a clarification of existing Omani law, not the creation of a new exemption. The Revenue had not shown why Article 25 and Article 8(bis) were inapplicable.

Source: [reported judgment / paragraphs 11-15 / PDF pages 5, 6, 7, 8, 9, 10 / judgment](#); [reported judgment / paragraphs 16-19 / PDF pages 10, 11 / judgment](#)

03 JUDICIAL DECISION

The Supreme Court rejected the Revenue's challenges and dismissed all the connected appeals. The favourable tax-credit treatment upheld by the Tribunal and High Court therefore stood. Delay was condoned in the two diary matters identified at the start of the judgment, and leave was granted in the three SLP matters before the common disposal.

Source: [reported judgment / paragraphs Opening delay-condonation direction; 2-3, 20 / PDF pages 3, 11 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee

All six Revenue civil appeals dismissed; favourable treaty tax-credit treatment and setting aside of section 263 revision left standing

Treaty tax-sparing entitlement decided on the Omani statutory incentive, PE treatment and record before the Court

The Indian assessment charged the dividend and allowed treaty credit. This is not a general rule that all foreign-tax-exempt dividends are excluded from Indian taxable income. The decision depends on the applicable treaty tax-sparing clause, qualifying incentive and established facts; it does not certify the present text of either country's law.

Source: [reported judgment / paragraphs 20 / PDF pages 11 / judgment](#)

05 AKHB REVIEW POINT

Distinguish an exemption from income from a credit against tax. For a comparable legacy-year claim, assemble the applicable treaty text, the foreign charging and exemption provisions, evidence of the incentive's development purpose, the PE and investment connection, and the foreign assessment or clarification material. Explain the credit computation and treaty ceiling rather than claiming an unlimited Indian exemption simply because the foreign country collected no tax. In section 263 proceedings, connect the Assessing Officer's allowed credit to that evidence and legal framework; do not extend this judgment to a different treaty lacking a tax-sparing provision.

Source: [reported judgment / paragraphs 5-8 / PDF pages 3, 4 / judgment](#); [reported judgment / paragraphs 12-19 / PDF pages 5, 6, 7, 8, 9, 10, 11 / judgment](#)

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 11 PDF pages; SHA-256

8da2535c74d837d51925cd1403e444155cb8508160eeee470bb52e031ba01553. Original bytes preserved.

Open cited source rendition

All pinpoints refer to the supplied 11-page SCR rendition, with printed SCR pages 590-600. Judicial text begins on physical PDF p. 3 and ends on p. 11; editorial headnotes on pp. 1-2 are excluded as authority.

The opening delay-condonation direction is unnumbered in the supplied rendition, followed by paragraph 2. It is identified descriptively rather than silently assigned a printed paragraph number.

The source sometimes describes Article 25 as part of Omani tax law, whereas the instrument reproduced in paragraph 12 identifies Article 25 as the DTAA avoidance-of-double-taxation provision. The note consistently distinguishes treaty Article 25 from Omani Articles 8 and 8(bis).

Paragraph 6 contains a facially awkward description that tax was payable and accordingly no tax had been paid. The note relies on the clear assessment account in paragraphs 5-8 and the Court's reasoning in paragraphs 13-20 instead of reproducing that wording as a separate finding.

The reproduced 2000 letter on physical p. 10 contains an embedded ITAT case-caption and AY 2010-11/2011-12 line. Visual inspection confirms it is in the supplied source, not an extraction invention. It is not used to date the historical letter, assign every Supreme Court appeal an assessment year, or infer separate facts.

Paragraph 17 uses the broad phrase same tax treatment in India. The note reads it with paragraphs 5-8 and Article 25(2)/(4): the claim upheld was Indian tax credit for tax spared in Oman, not a free-standing exclusion of every such dividend from Indian income.

No express order on costs appears in the operative paragraph; the note does not add a no-costs direction. No later-treatment or current treaty-status verification is claimed.

Both citations, lead case number, date and bench verified on physical PDF p. 1. Judgment author verified from judicial text on physical p. 3, rather than inferred from corpus metadata.

Paragraph 5 calls it the relevant year but does not identify that year. AYs 2010-11 and 2011-12 appear inside an anomalous inserted ITAT-caption line within the reproduced 11 December 2000 letter on physical p. 10, not as an unambiguous statement of the years covered by all six Supreme Court appeals. They are therefore not assigned as the batch assessment years.

Civil appeal numbers verified on physical PDF pp. 1-2. Paragraphs 1-3 on p. 3 also identify the appeals arising from SLP (C) Diary 4647/2018, SLP (C) 11204/2023 and SLP (C) Diary 15333/2023; the reported text does not expressly pair each newly numbered civil appeal with each SLP.

STATUTORY SCOPE

This note reviews the 1961 Act judgment and the historical provisions considered in it. No clause-level mapping to the Income-tax Act, 2025, later amendment audit or current-law certification has been undertaken.

LATER TREATMENT

Source checked 2026-10-04. Subsequent appeals, review proceedings, stays, reversals and later judicial treatment have not been comprehensively checked. This note is not a citator status certificate.

IDENTIFIED SOURCE LINKS

[reported judgment - PDF p. 1 - PDF pages: 11](#)

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