

Apex Court: Indian Company with Oman PE Eligible to Claim FTC on Tax-Exempt Dividend Income Earned in Oman

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The Apex Court of India (SC), in the case of *Principal Commissioner of Income Tax v. M/S Krishak Bharti Cooperative Ltd.* (Civil Appeal No. 836 OF 2018), dismissed the Revenue's appeal and upheld the lower court's decisions allowing foreign tax credit on Omani dividend income although it was tax-exempt in Oman.

(a) Facts. The taxpayer, a co-operative society registered in India, held 25% in a joint venture (JV) with a company registered in Oman. The taxpayer also had a branch in Oman, which was independently registered as a company under the Omani laws having permanent establishment (PE) status in Oman in terms of article 25 of the [India-Oman Income Tax Treaty \(1997\)](#) (Treaty). The taxpayer earned dividend income from the JV, offered it to tax in India and claimed a foreign tax credit on such income under article 25(4) of the Treaty. Although the lower court allowed the tax credit (see [HC decision: Treaty between India and Oman – Indian Company with Oman PE is eligible to claim FTC under tax sparing clause \(2 June 2017\)](#)), the Revenue contested the tax credit citing that the said dividend income was exempt under the Omani tax laws and accordingly, was not entitled to tax credit under the Treaty.

(b) Issue. The SC examined the issue whether the dividend income earned by the taxpayer is taxable in India, although exempted under Omani laws, and entitled to the benefits of the Treaty.

(c) Decision. The SC ruled in favour of the taxpayer, dismissed the Revenue's appeal and observed as follows:

- Under article 8 of the Omani Tax Laws, dividend income is taxable, whereas, article 8(bis) exempts dividend income received by a company from its ownership of shares, portions, or shareholding in the share capital in any other company. Since the taxpayer had invested in the project by setting up a PE in Oman, it aided in promoting economic development within Oman and achieved the object of article 8(bis).
- A joint reading of articles 25(2) and 25(4) of the Treaty implies that tax payable in Oman is deemed to include the tax which would have been payable, but for the tax incentive granted under the Omani Tax Laws, which were designed to promote development.
- Thus, article 8(bis) exempts dividend tax received by the taxpayer from its PE in Oman and by virtue of article 25, the taxpayer is entitled to the same tax treatment in India as it received in Oman.
- In a letter, the Omani Finance Ministry stated that tax would be payable on dividend income earned by PEs of the Indian investors, as it would form part of their gross income under article 8, if not for the tax exemption provided under article 8(bis).
- The taxpayer's branch in Oman was treated as a PE from its inception up to the year 2011 and tax exemption was granted based on article 25 of the Treaty read with article 8(bis) of the Omani Tax Laws. Accordingly, there was no reason for denying the PE status to the taxpayer's branch.

The decision, pronounced by the SC on 15 September 2023, is available [here](#) (as a pdf in English).

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