

The Royal Bank of Scotland, N.V. v. Director of Income Tax (International Taxation), Kolkata

ITA 699 of 2007 with GA 1 of 2014 (Old No. 3327 of 2014)

ITA 699 of 2007 with GA 1 of 2014 (Old No. 3327 of 2014) (Cal HC, decided 22.09.2026) | 2026-09-22

Foreign bank PE (AY 2003-04): (1) Higher foreign-company tax rate valid under Explanation to section 90 & Article 24(2); (2) Rs. 99.77 lakh interest paid by Indian PE to head office disallowed under section 40(a)(i) for non-deduction of section 195 TDS; (3) Interest received by PE from head office/branches taxable under Article 7 separate-entity fiction; (4) ATMs qualify as 'computers' eligible for higher depreciation.

Income-tax Act, 1961: sections 2(22A), 2(23A), 32, 40(a)(i), Explanation to section 90, 195 and 260A | India-Netherlands DTAA: Articles 7, 7(3) and 24(2); Income-tax Rules, 1962: Appendix I, Item 2B

High Court at Calcutta | 2-judge bench (Division Bench) | Rajarshi Bharadwaj, J. | Uday Kumar, J.

Assessment years: 2003-04

Split outcome: Three international-tax questions decided for Revenue; ATM depreciation decided for Assessee

Paragraphs 11, 15, 20 and 24 (PDF pp. 5-9) decide Questions (1), (2) and (3) against the assessee bank and in favour of the Revenue, while Paragraph 23 decides Question (4) on ATM computer depreciation in favour of the assessee.

01 FACTS OF THE CASE

For AY 2003-04, The Royal Bank of Scotland N.V. (formerly ABN Amro Bank N.V., incorporated in the Netherlands) appealed under section 260A against the ITAT Kolkata 'C' Bench order dated 10.07.2007 on four admitted substantial questions of law: (i) whether its Indian PE was entitled to the domestic company tax rate under Article 24(2) of the India-Netherlands DTAA; (ii) whether Rs. 99,77,325 interest paid by the Indian PE to its overseas head office and branches was deductible despite non-deduction of TDS under section 195/40(a)(i); (iii) alternatively, whether interest received by the Indian PE from its head office/foreign branches should be excluded as a receipt from self; and (iv) whether Automated Teller Machines (ATMs) qualify as 'computers' under Item 2B of Appendix I to the Income-tax Rules.

Source: [Paragraphs 1-6; PDF pp. 1-4 \(20260922 WBCHCO0047462007.pdf\)](#)

02 DISCUSSION BY THE HON'BLE COURT

The Division Bench ruled on each question: (1) Under sections 2(22A) and 2(23A) read with the retrospective Explanation to section 90 (inserted by Finance Act, 2001 w.e.f. 01.04.1962) and Royal Bank of Scotland N.V. v. CIT, (2026) 494 ITR 171 (Cal), a foreign company is not in the 'same circumstances' as a domestic company under Article 24(2) and is liable to the foreign company tax rate; (2) Under Article 7(3) of the India-Netherlands DTAA and CBDT Circular No. 740, the Indian PE is treated as a separate entity for profit attribution; the bank cannot invoke that fiction to claim an interest deduction of Rs. 99,77,325 while discarding it to evade section 195 TDS, so section 40(a)(i) disallowance applies; (3) Question (2) turned on statutory section 40(a)(i) TDS non-compliance rather than single-entity mutuality, and under the Article 7 separate-entity fiction, interest received by the Indian PE from its head office/foreign branches is taxable business income of the PE; and (4) Functionally, an ATM is a specialized digital data-processing and network-communicating unit qualifying as a 'computer' under Item 2B of Appendix I.

Source: [Paragraphs 8-23; PDF pp. 4-8 \(20260922 WBCHCO0047462007.pdf\)](#)

03 JUDICIAL DECISION

Allowing the appeal in part, the High Court answered Substantial Questions (1), (2), and (3) in the affirmative in favour of the Revenue and Question (4) in the negative in favour of the assessee, modifying the ITAT order dated 10.07.2007 accordingly and directing the AO to pass a consequential order for AY 2003-04.

Source: [Paragraphs 24-25; PDF pp. 8-9 \(20260922 WBCHCO0047462007.pdf\)](#)

04 OUTCOME / IN WHOSE FAVOUR

Partly in favour of the Revenue (Questions 1, 2 & 3 on tax rate, section 40(a)(i) PE-to-HO interest disallowance, and taxability of HO-to-PE interest receipt) and partly in favour of the assessee (Question 4 granting higher computer depreciation on ATMs).

Source: [Paragraph 24; PDF pp. 8-9 \(20260922 WBCHCO0047462007.pdf\)](#)

05 AKHB REVIEW POINT

AKHB analysis: Unlike the AY 2002-03 judgment (ITA 522 of 2007), the AY 2003-04 judgment in ITA 699 of 2007 additionally adjudicates two crucial international-tax questions against foreign bank PEs under the India-Netherlands DTAA: (a) interest paid by the Indian PE to the head office without section 195 TDS is disallowed under section 40(a)(i), and (b) interest received by the Indian PE from the head office/branches is simultaneously taxable in the PE's hands under Article 7.

Source: [Full judgment PDF \(9 pp.\)](#)

SOURCE & VERIFICATION

[Original judgment PDF \(20260922_WBCHCO0047462007.pdf\)](#)

Reviewed from the complete 9-page official High Court judgment PDF (20260922_WBCHCO0047462007.pdf, SHA-256: dac97e5d809361a9801e43974cac6d6caed9171093058f2dd7cee9e9291bbf2a).

Supplied source-reviewed note retained; original bytes and identity validation checked in this release. Substantive re-review is not claimed for this record.

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Primary source verified page-by-page (9 physical pages, 285,681 bytes, SHA-256: dac97e5d809361a9801e43974cac6d6caed9171093058f2dd7cee9e9291bbf2a). Cloud Google Drive File ID: 1GQDtlgGnPdJXoRXNc692GS1fMvsUORoq (https://drive.google.com/file/d/1GQDtlgGnPdJXoRXNc692GS1fMvsUORoq/view).

STATUTORY SCOPE

Refers to the Income-tax Act, 1961 and allied statutory rules/circulars as applicable to the relevant assessment years.

LATER TREATMENT

Source checked 2026-10-18. No subsequent Supreme Court reversal or stay is recorded in the source judgment text.

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