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), 40(a)(i), 90, 195, 260A | India-Netherlands DTAA: Articles7,7(3),24(2) | Income-tax Rules: AppendixI, Item2B

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

Assessment years: 2003-04

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: PDF pp.1–3, paras 1–6

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: PDF pp.4–8, paras 8–23

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: PDF pp.8–9, para 24

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: PDF p.9, paras 24–25

05 EXPERT COMMENTS

AKHB Expert Comments — editorial analysis.

Rate and profit computation use different tests: Article7's separate-enterprise approach did not turn the Netherlands bank into a domestic company for the tax-rate question. The Court applied the section90 explanation and Article24(2) separately from branch-profit computation. (PDF pp.4–6, paras8–15)

Expense disallowance does not determine receipt character: Paid interest was disallowed for TDS non-compliance, not because every head-office transaction was nonexistent. The Court therefore rejected automatic exclusion of received interest. Any symmetry argument must address the actual basis of the expense disallowance. (PDF pp.6–7, paras15–20)

ATM classification turns on function: Processing, specialised software and network communication supported computer classification. The judgment states no numerical depreciation rate. Its reasoning requires attention to the equipment's functions rather than merely its banking use. (PDF pp.7–8, paras21–23)

Implement the mixed result for the correct year: For AY2003-04, only question4 succeeded; questions1–3 went to Revenue. The consequential order must follow that split. Paragraph5 mentions six questions and lease history, but the four reproduced questions and operative answers supply no additional lease holding. (PDF pp.2–3, paras5–6; pp.8–9, para24)

Source: PDF pp.4–6, paras8–15

SOURCE & VERIFICATION

Original judgment PDF (20260922_WBCHCO0047462007.pdf)

Complete 9-page original reviewed; SHA-256 verified.

Full source and panel review:21 October2026.

Open cited source rendition

All original pages and five panels checked; separate docket and assessment year retained.

STATUTORY SCOPE

Only provisions expressly stated in this order are indexed. Subsequent treatment and current law have not been independently verified.

LATER TREATMENT

Source checked 2026-10-21. Subsequent proceedings and current judicial treatment have not been independently verified.

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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