

The Royal Bank of Scotland, N.V. v. Commissioner of Income Tax, Kolkata III

ITA 191 of 2006 with GA 1 of 2014 (Old No. 3589 of 2014)

ITA 191 of 2006 (Cal HC, decided 22.09.2026) | 2026-09-22

Foreign bank PE (AY 1999-2000 main appeal): four substantial questions answered for Revenue—foreign-company tax rate valid under section 90 Explanation 1 & India-Netherlands DTAA Art. 24(2); branch-to-HO interest of Rs. 99.77 lakh disallowed u/s 40(a)(i) & taxable in HO hands; and Rs. 1.52 crore HO-to-branch interest receipt taxable in PE hands.

Income-tax Act, 1961: sections 2(22A), 2(23A), 40(a)(i), 90 Explanation 1, 143(1), 143(3), 195 and 260A | India-Netherlands DTAA: Articles 7(3) and 24(2)

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

Assessment years: 1999-2000

Reproduces all four admitted questions (i)–(iv) (unlike companion ITA 257 of 2007 which omitted Question iii), while repeating the paragraph 22 operative-wording anomaly

ITA 191 of 2006 challenges the main ITAT order dated 28.02.2006 for AY 1999-2000 and reproduces all four admitted questions in paragraph 7 (including Question iii on taxability of branch-to-HO interest in the hands of the head office/overseas branches, which was omitted in companion ITA 257 of 2007). As in ITA 257 of 2007, although paragraphs 12, 16 and 21 answer all four questions 'in the affirmative, i.e., against the assessee and in favour of the revenue', paragraph 22 prints: 'the appeal under Section 260A is allowed, with all the substantial questions of law (1), (2), (3) and (4) answered in the affirmative and in favour of the revenue. The impugned order of the Learned Tribunal dated February 28, 2006, is hereby set aside...'.

01 FACTS OF THE CASE

In ITA 191 of 2006, Royal Bank of Scotland N.V. (formerly ABN Amro Bank N.V.) challenged the main order dated 28.02.2006 (read with miscellaneous order dated 22.12.2006) of the ITAT Kolkata 'C' Bench for AY 1999-2000. Four substantial questions of law were admitted on 07.01.2010: (i) whether the appellant was liable to income-tax at the higher rate applicable to a foreign company under sections 2(22A) and 90 read with Article 24(2) of the India-Netherlands DTAA; (ii) whether interest of Rs. 99,77,325 paid by the Indian PE to its head office and overseas branches was disallowable in computing PE profits; (iii) whether such interest paid by the Indian PE to the head office/overseas branches was liable to tax in India as income of the head office/overseas branches; and (iv) whether interest of Rs. 1,52,17,356 received by the Indian PE from its head office/overseas branches should be excluded from PE profits.

Source: [Paragraphs 1-7; PDF pp. 1-4](#)

02 DISCUSSION BY THE HON'BLE COURT

The Division Bench answered all four substantial questions of law in the affirmative, against the assessee and in favour of the Revenue: (1) On Question (1) (paras 9-12), under section 2(22A)/(23A) and retrospective Explanation 1 to section 90 (as upheld in (2026) 494 ITR 171), charging a higher corporate tax rate on a foreign company does not violate Article 24(2) of the India-Netherlands DTAA; (2) On Questions (2) and (3) (paras 13-16), under Article 7(3) of the DTAA and CBDT Circular No. 740, the Indian branch PE is treated as a separate enterprise and interest remitted by the PE to the overseas head office has its source in India and is taxable in the hands of the head office, attracting mandatory TDS under section 195 and consequent disallowance under section 40(a)(i) upon non-deduction; and (3) On Question (4) (paras 17-21), under the same separate-entity fiction of Article 7, interest of Rs. 1,52,17,356 received by the Indian PE from its foreign head office and branches is taxable business income of the PE.

Source: [Paragraphs 9-21; PDF pp. 4-8](#)

03 JUDICIAL DECISION

Answering all four substantial questions of law (1), (2), (3) and (4) in the affirmative, against the assessee and in favour of the Revenue, the High Court disposed of ITA 191 of 2006 and GA 1 of 2014 with no order as to costs (subject to the identical clerical phrasing in paragraph 22 noted in the warning box).

Source: [Paragraphs 12, 16, 21-23; PDF pp. 6-8](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of the Revenue on all four substantial questions of law (1), (2), (3) and (4) for AY 1999-2000.

Source: [Paragraphs 12, 16, 21-22; PDF pp. 6-8](#)

05 AKHB REVIEW POINT

AKHB analysis: read ITA 191 of 2006 (main order dated 28.02.2006, 4 questions) together with ITA 257 of 2007 (MA order dated 22.12.2006, 3 questions): ITA 191 of 2006 explicitly adjudicates Question (iii)—confirming that under Article 7(3) of the India-Netherlands DTAA and CBDT Circular No. 740, branch-to-HO interest is positively taxable in India as income of the overseas head office even prior to the Finance Act, 2015 Explanation to section 9(1)(v).

Source: [AKHB analysis based on paragraphs 7, 13-16 / PDF pp. 3-7](#)

SOURCE & VERIFICATION

Calcutta High Court official judgment PDF - AKHB Cloud Repository

Eight-page official Calcutta High Court judgment PDF (Form No. J(2), Original Side) in ITA 191 of 2006; paragraphs 1-24 span PDF pages 1-8.

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

Open cited source rendition

Full 8-page official Calcutta High Court PDF read and verified. Original bytes match SHA-256 ddcdd397159b9e0a9c73ef07f866b512bf5dce2385f3202804c240186df5d1f7.

STATUTORY SCOPE

Applies sections 2(22A), 2(23A), 40(a)(i), 90 Explanation 1 and 195 of the Income-tax Act, 1961 read with Articles 7(3) and 24(2) of the India-Netherlands DTAA for AY 1999-2000. Income-tax Act, 2025 equivalence is not verified.

LATER TREATMENT

Source checked 2026-10-17. Full judgment checked. Cites Royal Bank of Scotland N.V. v. CIT, (2026) 494 ITR 171 (Cal). Companion to ITA 257 of 2007 (hc-cal-2026-09-22-royal-bank-of-scotland) and ITA 439 of 2007 (hc-cal-2026-09-22-rbs-atm-depreciation-ay2002-03). Comprehensive subsequent judicial treatment has not been 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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