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

AY 1999-2000: all four tax-rate and branch-interest questions answered for Revenue; the source also prints inconsistent operative wording.

Income-tax Act,1961: sections 2(22A), 2(23A), 40(a)(i), 90, 143(1), 143(3), 195, 260A | India-Netherlands DTAA: Articles7,7(3),24(2)

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

Assessment years: 1999-2000

Unresolved operative-wording inconsistency

The answers favour Revenue, but paragraph 22 also says the appeal is allowed and the Tribunal order set aside. No correction or clarification is established by this source.

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: PDF pp.1–4, paras 1–7

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: PDF pp.4–8, paras 9–21

03 JUDICIAL DECISION

The Court answered all four questions for Revenue. Paragraph 22 nevertheless states that the appeal is allowed, sets aside the Tribunal order and directs a consequential order giving effect to reliefs. That wording conflicts with the stated answers and reasoning; the supplied source does not resolve the inconsistency. Connected applications were disposed of without costs.

Source: PDF p.8, paras 21–23

04 OUTCOME / IN WHOSE FAVOUR

All four legal answers are against the assessee, but the operative paragraph contains the unresolved allowed/set-aside wording described above. It should not be represented as an unqualified dismissal or an unqualified taxpayer victory.

Source: PDF p.8, paras 21–23

05 EXPERT COMMENTS

AKHB Expert Comments — editorial analysis, distinct from the Court's findings.

The four questions cover both directions of branch interest: Unlike a general reference to inter-branch interest, this appeal separately framed deductibility of Rs.99,77,325 paid, its taxability in the overseas office's hands, and exclusion of Rs.1,52,17,356 received by the Indian PE. The Court's answers address those distinct questions. The offshore-remuneration amount mentioned in the background was not made a separate question or decided in the reasoning. (PDF pp.2–4, paras 3–7; pp.6–8, paras 13–21)

The Court rejected symmetry based on a mistaken premise: The Court treated the paid-interest disallowance as a consequence of TDS non-compliance, not a conclusion that all dealings with the head office were legally nonexistent. It therefore rejected the claimed automatic exclusion of received interest. The useful distinction is between statutory disallowance of an expense and characterisation of a receipt under the separate-enterprise approach used in this judgment. (PDF pp.6–8, paras 13–21)

The contradictory operative wording needs resolution before implementation: Paragraph 22 combines answers for Revenue with language allowing the appeal and setting aside the Tribunal order. It is unsafe to assume that one part has been formally corrected or to infer a quantified refund from it. Any consequential implementation requires the authoritative operative record or clarification. The note preserves the conflict without labelling it an established clerical correction. (PDF p.8, paras 21–24)

Source: PDF pp.2–4, paras3–7; pp.6–8, paras13–21

SOURCE & VERIFICATION

Calcutta High Court official judgment PDF - AKHB Cloud Repository

All 8 original pages read and visually reviewed; SHA-256 verified. Source-based analysis, not current-law clearance.

All five panels re-reviewed against the original on 21 October 2026.

Open cited source rendition

Complete original source and all five note panels checked; original docket identities preserved.

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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