

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

ITA 257 of 2007 with GA 1 of 2014 (Old No. 3593 of 2014)

ITA 257 of 2007 (Cal HC, decided 22.09.2026) | 2026-09-22

Foreign bank PE: higher corporate tax rate valid under section 90 Explanation 1 & India-Netherlands DTAA Art. 24(2); interest paid to HO disallowed u/s 40(a)(i) for non-deduction of TDS while interest received from HO remains taxable under separate-entity fiction.

Income-tax Act, 1961: sections 2(22A), 2(23A), 40(a)(i), 90 Explanation 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, 2000-01, 2001-02

Printed operative-wording anomaly in paragraph 22 alongside clear substantive answers in favour of Revenue

Although the appeal was filed by the assessee (Royal Bank of Scotland, N.V.) challenging the ITAT order dated 22.12.2006 and paragraphs 12, 16 and 21 expressly answer all three substantial questions of law 'in the affirmative, i.e., against the assessee and in favour of the revenue' (affirming the ITAT's conclusions on every issue), paragraph 22 prints: 'the appeal under Section 260A is allowed, with all the substantial questions of law (1), (2) and (3) answered in the affirmative and in favour of the revenue. The impugned order of the Learned Tribunal dated December 22, 2006, is hereby set aside and the Assessing Officer is directed to pass a consequential order giving effect to the reliefs granted herein'. Further, paragraph 6 states that 'four substantial questions of law' were admitted on 07.01.2010 and paragraph 3 mentions a Rs. 57,22,807 offshore expatriate-remuneration claim, but paragraph 7 reproduces and the judgment adjudicates only three questions (tax rate, interest paid to HO, and interest received from HO). Rely on the explicit question-by-question holdings in paragraphs 12, 16 and 21.

01 FACTS OF THE CASE

The appellant, Royal Bank of Scotland N.V. (formerly ABN Amro Bank N.V.), a banking company incorporated in the Netherlands operating in India through a branch Permanent Establishment (PE), appealed against the ITAT Kolkata 'C' Bench order dated 22.12.2006 for AYs 1999-2000, 2000-01 and 2001-02. In its return for AY 1999-2000, the bank (i) computed tax at the domestic company rate invoking non-discrimination under Article 24(2) of the India-Netherlands DTAA, and (ii) claimed deduction of Rs. 99,77,325 towards interest paid by the Indian PE to its head office and overseas branches without deducting TDS under section 195. During the ITAT appeal, the bank raised an additional ground that if interest paid to the head office was disallowed as a 'payment to self', then Rs. 1,52,17,356 of interest received by the Indian PE from its head office and overseas branches (which had been offered to tax in the return) must likewise be excluded. The AO, CIT(A) and ITAT rejected all three claims.

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

02 DISCUSSION BY THE HON'BLE COURT

The Division Bench answered all three questions in favour of the Revenue: (1) On corporate tax rate (paras 9-12), the appellant did not satisfy section 2(22A) and was a 'foreign company' under section 2(23A). Explanation 1 to section 90 (inserted retrospectively w.e.f. 01.04.1962 by Finance Act, 2001) clarifies that charging a higher tax rate on a foreign company is not 'less favourable' treatment, as held in *Royal Bank of Scotland N.V. v. CIT*, (2026) 494 ITR 171 (Cal); moreover, under Article 24(2) of the India-Netherlands DTAA, a foreign company taxed only on Indian-source income is not in the 'same circumstances' as a domestic company taxed on global income. (2) On interest paid to the head office (paras 13-16), under the separate-entity fiction of Article 7(3) of the DTAA (and CBDT Circular No. 740), a banking PE claiming an expense deduction for interest paid to its overseas head office cannot discard that separate-entity fiction to evade section 195 TDS; non-deduction of TDS directly triggers disallowance under section 40(a)(i). (3) On interest received from the head office (paras 17-21), the disallowance of interest paid was due to statutory non-compliance with section 40(a)(i) TDS rather than a 'payment to self' rule, and under Article 7's separate-entity fiction, interest earned by the Indian PE from overseas branches/HO is taxable business income of the PE.

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

03 JUDICIAL DECISION

All three substantial questions of law (1), (2) and (3) were answered in the affirmative, against the assessee and in favour of the Revenue, with no order as to costs (while paragraph 22 formally directed the Assessing Officer to pass a consequential order giving effect to the answers in favour of the Revenue).

Source: [Paragraphs 12, 16, 21 and 22-24; PDF pp. 5-8](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of the Revenue on all three substantive questions of law: foreign-company tax rate upheld, section 40(a)(i) disallowance of Rs. 99,77,325 interest paid to HO upheld, and inclusion of Rs. 1,52,17,356 interest received from HO upheld.

Source: [Paragraphs 12, 16, 21-22; PDF pp. 5-8](#)

05 AKHB REVIEW POINT

AKHB analysis: foreign banking PEs operating under treaties that adopt the Article 7 separate-enterprise attribution model cannot selectively invoke separate-entity status to deduct branch-to-HO interest while claiming single-entity mutuality to avoid section 195 withholding or to exclude HO-to-branch interest receipts. For post-2015 assessment years, also read this decision alongside the statutory deeming fiction in Explanation to section 9(1)(v) inserted by the Finance Act, 2015.

Source: [AKHB analysis based on paragraphs 9-22 / PDF pp. 4-8](#)

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); paragraphs 1-25 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 9c2294ba701b119d7ccb1e406d5c685ac6c5576890b5e7bf41705423754848d5. Both the 4-vs-3 question recital and the paragraph 22 wording anomaly are disclosed verbatim.

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 and 24(2) of the India-Netherlands DTAA for AYs 1999-2000 to 2001-02. Note also the later insertion of Explanation to section 9(1)(v) by Finance Act, 2015 (w.e.f. 01.04.2016) regarding Indian branch-to-HO interest.

LATER TREATMENT

Source checked 2026-10-16. Full judgment checked. Cites coordinate-bench decision in Royal Bank of Scotland N.V. v. CIT, (2026) 494 ITR 171 (Cal). Comprehensive subsequent judicial treatment has not been verified.

AI DISCLOSURE

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