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

Source operative wording is internally inconsistent

Paras. 12, 16 and 21 answer all three questions for Revenue. Yet para. 22 says the assessee's appeal is allowed and the ITAT order set aside, while again answering for Revenue. Para. 6 mentions four questions; only three are reproduced and decided. This note preserves the discrepancy rather than silently correcting the order.

01 FACTS OF THE CASE

The Netherlands-incorporated bank appealed the ITAT's 22 December 2006 order for AYs 1999–2000, 2000–01 and 2001–02. It claimed domestic-company tax rates and deduction of Rs. 99,77,325 interest paid by its Indian branch to overseas offices. The AO and CIT(A) disallowed the interest for non-deduction of tax; the Tribunal's reasoning, as narrated, invoked payment to self. The bank also sought exclusion of Rs. 1,52,17,356 interest received from overseas offices if its outgoing interest was non-deductible on that basis. The Tribunal rejected that additional ground after a miscellaneous application.

Source: Paras.1–7; PDF pp.1–4

02 DISCUSSION BY THE HON'BLE COURT

The Court held that the bank did not qualify as a domestic company and that the explanation to section 90 and Article 24(2) did not entitle it to domestic rates. On outgoing interest, it applied the banking PE's separate-enterprise treatment under Article 7, Circular 740 and sections 195/40(a)(i): a deduction could not be claimed while withholding obligations were disregarded. It treated incoming interest as taxable business income and rejected the proposed symmetry with payment-to-self disallowance. These are the Court's stated conclusions for this treaty and these historical years.

Source: Paras.9–21; PDF pp.4–8

03 JUDICIAL DECISION

Paras. 12, 16 and 21 answer all three questions against the assessee and for Revenue. Para. 22 nevertheless says the appeal is allowed and the ITAT order set aside, while directing a consequential AO order and repeating the Revenue-favouring answers. That internal inconsistency is unresolved in the supplied source. Connected applications were disposed of; no costs were awarded.

Source: Paras. 12, 16, 21–24; PDF pp.5–8

04 OUTCOME / IN WHOSE FAVOUR

The express issue-wise holdings favour Revenue on the rate, outgoing-interest deduction and incoming-interest inclusion. The contradictory formal wording in paragraph 22 prevents an unqualified description of the procedural result; check the certified order and any correction or consequential proceedings.

Source: Paras. 12, 16, 21–24; PDF pp.5–8

05 EXPERT COMMENTS

State the holdings and the operative anomaly together — The repeated answers favour Revenue, but paragraph 22 also allows the assessee's appeal and sets aside the Tribunal order. An editor cannot repair that conflict by choosing a convenient label. A filing or consequential computation should use the certified order and check for rectification; none is verified here.

Keep rate and interest questions analytically distinct — Domestic-company status and treaty non-discrimination underpin the rate conclusion. Separate-enterprise attribution and withholding underpin the interest conclusion. Success or failure on one does not mechanically resolve the others; identify the provision and treaty language supporting each proposed application.

Separate deductibility from withholding compliance — The Court's own interest analysis uses statutory non-compliance, although its narration attributes payment-to-self reasoning to the Tribunal. That distinction defeats the bank's proposed automatic exclusion of incoming interest. Do not describe every stage as having adopted the same rationale or infer that disallowing an outgoing amount exempts the corresponding receipt.

Respect the historical and unresolved scope — These are three historical years under the India–Netherlands treaty. The source's reference to four admitted questions does not establish a fourth adjudicated holding on expatriate remuneration. Nor does this judgment analyse later branch-interest legislation. Treaty text, applicable year and subsequent treatment require separate verification.

Source: Editorial analysis; sources identified in the structured comments

SOURCE & VERIFICATION

Calcutta High Court official judgment PDF - AKHB Cloud Repository

Complete 8-page original reviewed; scope and source anomalies stated below.

All 8 source pages read and visually inspected; original hash verified. AI-assisted substantive review.

Open cited source rendition

Source bytes and identity checked; see panel-specific source references.

STATUTORY SCOPE

Historical years 1999–2000 to 2001–02; the Court applies the cited domestic provisions and India–Netherlands DTAA. No later statutory amendment is independently analysed here.

LATER TREATMENT

Source checked 2026-10-21. Subsequent treatment not 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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