

## No disallowance could be made merely because amount of liability was yet to be ascertained: HC

**Summary – The High Court of Bombay in a recent case of Ballarpur Industries Ltd., (the Assessee) held that when there is a debt, mere fact that amount is to be ascertained does not make it any less a debt if liability is certain and what remains is only quantification**

### Facts

- The assessee established a paper factory of about 9000 tons capacity per annum. It entered into agreement with State Government in year 1947 in terms of which license to cut and remove bamboos was granted at Rs. 5 per Air dry metric ton (ADMT). Thereupon another agreement was entered into in year 1968 in terms of which royalty was payable at Rs. 60 per ADMT. The State Government informed the assessee in March 1983 that it had decided to fix the revised rate for royalty of bamboos to be exploited under 1947 and 1968 agreements at the rate of Rs. 200 per ADMT.
- The said enhancement of the royalty by the State Government was challenged in writ petition by the assessee. By an interim order, pending final disposal, the Court directed the assessee to pay royalty at the rate of 115 per metric ton in respect of both the 1947 agreement and the 1968 agreement.
- The writ petition continued to be pending during the relevant assessment year. The assessee claimed the entire amount of Rs. 115 per ADMT paid as royalty under the 1947 and 1968 agreement as revenue expenditure. The Assessing Officer disallowed the amounts paid in excess of the amounts fixed under the 1947 and 1968 agreements on the ground that it was contingent liability as the liability had not been ascertained and in any case, if the assessee succeeded in the petition, the same would not be allowable.
- The Tribunal, however, allowed the assessee's claim.
- On revenue's appeal:

### Held

- The Apex Court in the case of *Kedarnath Jute Manufacturing Co. Ltd. v. CIT* [\[1971\] 82 ITR 363](#) has laid down the text to ascertain whether the amount is a debt by holding that 'a liability depending upon a contingency is not a debt in presenti or in future till the contingency happened. But if there is debt, the fact that the amount is to be ascertained does not make it any less a debt if the liability is certain and what remains is only quantification'. Applying the above text, the amount at the rate of 115 per ADMT is a debt.
- In view of aforesaid, it is held that the Tribunal was justified in holding that deduction of royalty on bamboo exploited had to be allowed at rates other than those specified in the 1968 and 1947 agreements drawn with the State Government.