IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "I", MUMBAI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND DR. S.T.M. PAVALAN, JUDICIAL MEMBER

ITA No. 180/Mum/2012
Assessment Year: 2007-08

M/s. Isagro Asia (Agrochemicals) Pvt. Ltd. C/o. Shankarlal Jain & Associates, 12, Engineer Building, 265, Princess Street Mumbai- 400 002 **PAN: AAACI 8431 C**	Vs.	DCIT – Circle 8(2) Mumbai
(Appellant)		(Respondent)

Assessee by : Shri S.L. Jain
Revenue by : Shri Ravinder Sindhu

Date of hearing : 25.06.2014
Date of Pronouncement : 22.08.2014

O R D E R

PER Dr. S.T.M. PAVALAN, JM:

This Appeal filed by the Assessee is directed against the order of the Ld.CIT(A)-19, Mumbai dated 22.11.2011 for the Assessment Year 2007-08.

2. In this appeal, the assessee has raised six grounds, all relating to the single issue of allowability of foreign exchange loss incurred by the assessee.

3. Briefly stated, during the assessment proceeding, the AO, on perusal of the cash flow statement for the year ended on 31.03.2007 noticed that the assessee has incurred an unrealized foreign exchange loss of Rs.1,31,80,000/- during the year under consideration. Accordingly, the assessee was asked to explain why the unrealized foreign exchange loss should not be disallowed. In response, the assessee company did not come forward with any submission and accordingly the AO concluded that the unrealized foreign exchange loss was not a permissible deduction under the provision of Income Tax Act. Accordingly, the AO disallowed the claim and added the same to the total income of the assessee. On appeal before the Ld.CIT(A), the assessee relied on the decisions of the Hon'ble Apex Court in the

cases of *CIT Vs. Woodward Governor India Pvt. Ltd. 312 ITR 254 (SC)* and *ONGC Vs. CIT 322 ITR 180(SC)* and prayed that the loss being a expenditure was allowable deduction while computing the income u/s 37 of the Income-tax Act. However, the Ld.CIT(A) rejected the contentions of the assessee and concluded that the assessee has raised ECB in 2003-04 for expansion of its Panoli Plant and it could not be shown that any component borrowings was utilized towards any revenue items. Thus, the Ld.CIT(A) held that the unrealized foreign exchange loss had resulted on capital account in view of the decision of the Hon'ble Apex Court in the case of *Woodward Governor India Pvt. Ltd.(supra)* and thereby confirmed the disallowance made by the AO. However, while deciding so, the Ld.CIT(A) directed the AO to verify the the mistake in computation of the unrealized foreign exchange loss which was actually Rs.125.06 lakhs and not Rs.131.8 lakhs. Resultantly, the disallowance of Rs.125.06 lakhs was confirmed by the Ld.CIT(A). Aggrieved by the impugned decision, the assessee is in appeal before us.

4. Having heard both the sides and perused the material on record it is the contention of the learned counsel for the assessee is that the ECB borrowings are on general account of expansion of three existing industrial unit and hence, the ECB borrowings are not on capital account. Further, foreign exchange loss is to be determined as per the provision of accounting standard 11 read with standard 16 which provides that foreign exchange loss to the extent of difference between interest payable on borrowings made in foreign currency and interest payable in India shall be treated as borrowing cost and not as foreign exchange loss. Without prejudice, the counsel for the assessee submitted that the foreign exchange loss is not on capital account and if the same is treated as capital account the assessee is entitled for depreciation on the foreign exchange loss. Also, it is the submission of the learned counsel for the assessee that foreign exchange loss of Rs.125.06 lakhs consist of loss of repayment of two ECBs of Rs.84.69 lakhs and reinstatement of one ECBs of Rs.32.30 lakhs therefore, the loss of ECBs only of Rs.116.98 lakhs and balance loss in on account of assessee's transaction of export and import. Further, our attention has been drawn to the details of ECBs loans and its purposes by referring to various pages in the Paper Book which form part of the record. On the other hand, the Ld.DR has heavily relied on the decision of the Ld.CIT(A) in support

of the revenue's case. After perusing the rival contentions of both the sides, it is pertinent to mention that during the assessment year 2009-10, the assessee company has claimed foreign exchange loss of Rs.97,86,680/- which consist of loss of reinstatement of outstanding liability on account of ECB loans in foreign currency and the same has been accepted by the department. It is also pertinent to mention that during the previous AYs from 2001-02 to 2006-07, the department has accepted the gain offered by the assessee as income on account of similar foreign exchange fluctuation. When the facts are being, we do not find any justification on the part of the authorities below to disallow the loss claimed by the assessee during the year under consideration. In view of that matter, the AO is directed to verify the correct computation and allow the claim of the assessee accordingly.

5. In the result, the appeal filed by the **Assessee is treated as allowed.**

Order pronounced in the open court on this 22th day of August, 2014.

Sd/-	**Sd/-**
(N.K. BILLAIYA)	**(Dr. S.T.M. PAVALAN)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 22.08.2014
*Srivastava

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT(A) Concerned, Mumbai
The DR "I" Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.