

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC - C” BENCH, BANGALORE**

**Before Shri Chandra Poojari, Accountant Member**

ITA No.1815/Bang/2019 : Asst.Year 2013-2014

ITA No.1816/Bang/2019 : Asst.Year 2014-2015

ITA No.1817/Bang/2019 : Asst.Year 2015-2016

Sri.David Richard Hebel 2 <sup>nd</sup> Floor, BMTC Depot, 6 <sup>th</sup> Block 80 Feet Road, Koramangala Bangalore – 560 095. <b>PAN : ABXPH7921B.</b>	Vs.	The Dy.Commissioner of Income-tax, Circle 2(1)(2) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.K.Sheshadri, CA  
Respondent by : Dr.Ganesh R.Ghale, Standing Council for DR

<b>Date of Hearing : 26.02.2020</b>	<b>Date of Pronouncement : 28.02.2020</b>
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**ORDER**

These appeals filed by the assessee are directed against the common order of the CIT(A), dated 30.04.2019. The relevant assessment years 2013-2014, 2014-2015 and 2015-2016.

2. Since common issues are raised in these appeals, they were heard together and are being disposed of by this consolidated order.

3. Identical grounds are raised in these appeals, hence, for the sake of convenience, we reproduce grounds of appeal raised in ITA No.1815/Bang/2019 for assessment year 2013-2014, as under:-

*“1. The learned Commissioner of Income Tax (Appeals) erred in denying the Appellant’s claim for the set off of his share of*

*losses arising from limited liability companies (LLCs) in the United States of America against the Appellant's income in India.*

*2. The learned CIT(A) ought to have appreciated that, in the facts and circumstances of the case, the income or, as the case may be, losses arising from LLCs are required to be treated / dealt with in the hands of the partners / members of the LLCs (such as the Appellant) and not in the LLCs' own hands.*

*3. The learned CIT(A) erred in not applying the beneficial provisions of the Double Taxation Avoidance Agreement between India and the United States of America to the Appellant's case so as to allow the set off.*

*4. The learned CIT(A) erred by passing a non-speaking order.*

*5. The Appellant craves leave to add, alter, amend, substitute and forgo, any or all the grounds of appeal and adduce additional evidence before or at the time of the hearing.*

*6. In the facts and circumstances of the case, for the grounds taken, to be taken or which may be urged at the hearing, all of which are without prejudice to each other, and considering the law on the subject, it is humbly prayed that this appeal be allowed and that this Honourable Tribunal pass such other orders, as it thinks fit in the interests of justice."*

4. Briefly stated the facts of the case are that the assessee was a resident for the assessment year 2013-2014 and also a partner of two Limited Liability Companies (LLCs) in the name of Digital Juice Holdings LLC, Autumn Oaks Investments LLC situated in United States of America are fiscally transparent entities which has pass through status like a partnership for taxation, i.e., income / loss of the LLCs are taxed in the hands of the partners and the LLCs are not subjected to tax. The said LLCs have incurred loss of Rs.22,94,749 and same has been shown as business loss by the assessee while filing the return

of income for the said assessment year. The assessee has considered the said losses in his return of income and set off the same with income from other sources based on the provisions in Tax Treaty between India and USA. In the assessment proceedings, the Assessing Officer disallowed the claim of the assessee. Aggrieved, the assessee carried the matter in appeal before the CIT(A).

5. On appeal, the CIT(A) observed that the company and individual shareholder are two different legal entities and as per the provisions of the Income-tax Act, the assessee is supposed to show business income / loss in a proprietorship concern. This is not the case of the assessee. The provisions of the income-tax Act, 1961 do not allow claim of loss of company by any shareholder. As such, he upheld the disallowance made by the Assessing Officer.

6. Aggrieved by the orders of the Income Tax Authorities, the assessee is in appeal before the Tribunal.

7. I have heard the rival submissions and perused the material on record. At the very outset, the learned AR submitted that order of the CIT(A) is very cryptic and not a speaking order. I find force in the argument put forth by the learned AR. The provisions of section 250(6) of the I.T.Act are in the nature of judicial discretion to the appellate authority and emphasizing that the order disposed of shall be a speaking order. Order shall not be cryptic, but should be self-explanatory. Hence, I set aside the orders of the CIT(A) for all

the assessment years under consideration, and direct him to adjudicate the issues afresh by a speaking order, after giving a reasonable opportunity of being heard to the assessee. It is ordered accordingly.

8. Since I have remitted the entire issue raised by the assessee in all the assessment years under consideration to the files of the CIT(A), I refrain from going into the merit of other grounds raised by the assessee in his appeals.

9. In the result, the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced on this 28<sup>th</sup> day of February, 2020.

Sd/-  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

Bangalore ; Dated : 28<sup>th</sup> February, 2020.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-2, Bengaluru.
4. The Pr.CIT-2, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore