IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA

BEFORE : SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.126/Agr/2025
Assessment Years: 2010-11

Parvez Akhtar, House No. 173/14, Sadar Bazar, Mohalla Katra Siddiqi, Firozabad.	**Vs.**	Income-tax Officer, Ward 2(2)(3),Firozabad.
PAN : ABYPG5475A		
(Appellant)		**(Respondent)**

Assessee by	Sh. Sahib P. Satsangi, C.A.
Department by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	20.05.2025
Date of pronouncement	29.05.2025

ORDER

Per:Sunil Kumar Singh, Judicial Member:

This appeal has been preferred by assessee against the impugned order dated 09.01.2025 passed in Appeal No. CIT(Appeal) 2, Agra/10083/2018-19 by the Ld. Commissioner of Income-tax (Appeals), NFAC, Delhi u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for the assessment years [AY] 2010-11, wherein the ld. CIT(Appeals) has dismissed assessee's first appeal as barred by limitation.

2. Perused the records and heard the ld. Authorized Representative for the assessee and the ld. Departmental representative for the Revenue.

3. Reiterating the grounds of appeal, ld. AR has submitted that the ld. CIT(A) has erred in dismissing the assessee's first appeal *in limine* as barred by limitation without deciding the issues on merits, ignoring the fact that the first appeal was originally filed before the ld. CIT(A)-2, Agra as appeal No.75/CIT(A)-2/Agra on 06.06.2018against the assessment order dated 31.08.2017, after obtaining its certified copy on 09.05.2018. It is further submitted that the said appeal was admitted by the ld. CIT(A)-2, Agra as regular appeal, wherein the appellant/assessee had responded to the notice issued by ld. CIT(A)-2, Agra, written submissions were made on merits of the issue by filing additional evidences under Rule 46A of the IT Rules and remand report thereupon was sought by the ld. CIT(A)-2, Agra. Ld. AR further submitted that after migration of first appeal to NFAC, Delhi, the ld. CIT(A) was, therefore, not justified in dismissing the appeal as barred by limitation without looking to the fact that the date of service of assessment order was mentioned in Form-35 as 09.05.2018, according to which the appeal filed on 06.06.2018 was well within the period of limitation.Prayed to set aside the impugned order.

4. Learned DR has supported the impugned order.

5. Perusal of the records shows that the contentions of the ld. AR are supported by the assessee's paper book containing certified copy of assessment order received by appellant on 09.05.2018, copy of Form-35,

showing date of service of assessment order on 09.05.2018, copy of notice u/s. 250 dated 07.12.2018 issued by CIT(A)-2, Agra, copies of assessee's reply and written submissions dated 20.12.2018 and 18.01.2019 respectively, copy of application u/r. 46A dated 08.02.2019, copy of remand report dated 11.07.2019 sought by CIT(A)-2, Agra from the Assessing Officer on the additional evidences furnished by the assessee and copy of rejoinder dated 20.04.2021 filed by the assessee before CIT(A)-2, Agra. From all these documentary evidences, it is discernible that the first appeal filed by the assessee was admitted by ld. CIT(A)-2, Agra as regular appeal and, therefore, after migration of appeal to NFAC, there was no justification to treat the appeal as barred by limitation. All these facts, supported by corroborating documentary evidences, are not controverted on record. In the circumstances, we still condone the delay, if any, caused in filing first appeal. We deem it expedient in the interest of justice to remit the matter back to the file of learned CIT(Appeals) for adjudication on merits. We order accordingly. We further direct the assessee to be diligent and cooperative in attending the hearings and making submissions before the learned CIT(Appeals) for the expeditious and effective disposal. Assessee shall refrain from seeking adjournment but for compelling and unavoidable reasons. Needless to say that learned CIT(Appeals) shall ensure the observance of the principles of natural justice. The appeal is liable to be allowed accordingly.

6. In the result, the appeal is allowed for statistical purposes. The impugned order dated 09.01.2025 is set aside.

Order pronounced in the open court on 29.05.2025.

Sd/-	***Sd/-***
(MANISH AGARWAL)	**(SUNIL KUMAR SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 29.05.2025
*aks/-

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra