

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.2867/Del/2025
(Assessment Year:2011-12)**

Fresenius Kabi Oncology Limited, B-310, Som Datt Chambers-1, Bhikaji Cama Place, New Delhi	Vs.	Commissioner of Income Tax (Appeals)-26, Delhi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AABCD 7720 L		
Appellant	..	Respondent

Appellant by :	Sh. Aditya Vohra, Adv & Ms. Aakriti Bansal, CA
Respondent by :	Ms. Indu Bala Saini, Sr. DR

Date of Hearing	22.01.2026
Date of Pronouncement	30.01.2026

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the order dated 17.02.2025 of the Ld. Commissioner of Income-tax (Appeals)-26 (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.44/10276/2018-19 arising out of the order dated 19.12.2018 u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') passed by the DCIT, Circle-9(2) for AY: 2011-12.

2. Heard and perused the records. The assessee is a company engaged in the business of manufacturing, trading and sale of pharmaceutical products, and assessee had filed return of income declaring income of Rs.1,55,20,236/- under normal provisions of the Act and book profit of Rs.69,24,10,863/- under Section 115JB of the Act. The assessee had revised the return on 14.03.2013 wherein total income of Rs.1,65,65,240/- was declared under normal provisions of the Act and the book profit of Rs.61,94,88,824/- was declared u/s. 115JB of the Act.

2.1 The assessee's return was selected for scrutiny and the assessment order dated 20.03.2015 u/s. 143(3) of the Act was passed wherein Assessing Officer assessed total income at Rs.21,05,70,893/- under normal provisions

of the Act and accepted the book profits u/s. 115JB of the Act as returned by the assessee.

2.2 Thereafter on 12.01.2016, Assessing Officer issued notice u/s. 154 of the Act for rectification of mistake apparent from the record of income under normal provisions of the Act was assessed at Rs.24,17,56,421/-. However, no adjustment was made to the book profits.

2.3 Subsequently, Assessing Officer issued notice dated 31.03.2018 u/s. 148 of the Act, on the basis of the reasons recorded. Copy of which is placed in paper book at Page No.2-5. The reassessment proceedings culminated in passing of reassessment order dated 19.12.2018, wherein Assessing Officer increased the book profit u/s. 115JB of the Act to Rs.69,34,55,863/- as against Rs.61,94,88,824/- returned by the assessee and following disallowances were made by the Assessing Officer in the said reassessment order:-

Particulars	Amount (in Rs)
Disallowance of bad debts written off through 'provision for bad and doubtful debts'	6,47,93,000
Disallowance of expenditure incurred out of 'provision for others'	91,74,039
Total	7,39,67,039

4. Against the aforesaid reassessment order, assessee filed appeal before the CIT(A) and the CIT(A) vide order dated 17.02.2025 upheld the disallowances made by the assessing officer. Accordingly, the assessee is in appeal and at the time of hearing, learned counsel has primarily argued on Ground No.2 whereby the initiation of reassessment proceedings on the basis of audit objection and without any tangible material have been challenged.

4.1 Further, Ld. Counsel has also submitted that the initiation of reassessment proceedings was partly on account of change of opinion and in fact the initiation of reassessment proceedings was beyond the period of four years from the end of relevant assessment year and without there being any thing mentioned in the reopening about any failure on the part of assessee to disclose fully and truly all material facts, the reassessment was reopened.

5. Ld. DR controverted same by submitting that the contentions of assessee are devoid on merits and the reason as recorded are sufficient for initiation of reassessment and merely because some financial statements were available in the assessment proceedings that cannot be the basis for the assertion that there was true and correct disclosure of material facts.

6. We have given thoughtful consideration to the material on record and gone through the copy of reasons available at Page 2-5 of the paper book and we find that sources of information, Assessing Officer mentioned is that the audit objections received in the Office of Assessing Officer and leading to the reopening itself. Assessing Officer mentioned that the audit objections had mentioned the two issues the same could not be deducted while calculating the book profit. No other information/material, much less any tangible material, has been adverted to by the Assessing Officer in the 'reasons to believe' and such practice of reopening on the basis of audit objections alone with has not been appreciated by Hon'ble Supreme Court for which reliance be placed by ld. Counsel on the decision of **CIT Vs. PVS Beedies (P) Ltd:[1999] 237 ITR 13 (SC)**. We find Assessing Officer has not acted on to

initiate reassessment independently believing income escaped assessment but merely relied the audit report and that itself is fatal for department's case.

7. Then Ld. Counsel has demonstrated before us on the basis of reply dated 30.01.2015 filed during assessment proceedings wherein assessee submitted new claims in the revised Return of Income that assessee had specifically disclosed, inter alia, the deductions claimed in the revised return of income in respect of bad debts written off through 'provision for bad and doubtful debt' amounting to Rs.6,47,93,000/- and expenditure incurred out of 'provision for other' amounting to Rs.91,74,039/- while computing book profits u/s 115JB of the Act, which form the very basis for initiating impugned reassessment proceedings. In support of the said claim, assessee duly annexed copy of revised and original computation of income along with ITR, necessary supporting documents i.e., CA Certificate, financials, etc in the reply dated 30.01.2015. Copy of original computation and revised computation of income finds place @ **page no. 21-23 and 47-49 respectively, of the paper book**. Further, CA Certificate i.e., Form No. 29B finds place @ **page no. 128-130 of the paper book**.

8. That not only established that Assessing Officer was duly informed and made aware of all the relevant escapements of the two issues during assessment proceedings but he had all the material before him to analyze the issues. Therefore the reopening assessments is merely an outcome of audit objection and consequent change of opinion.

9. Further admittedly, the assessment u/s 143(3) of the Act was concluded on 20.03.2015 and four years from the end of the relevant assessment year i.e., AY 2011-12 expired on 31.03.2016. However, notice was issued on 31.03.2018, which is beyond the period of four years and in terms of proviso to Section 147 of the Act, it was necessary to mention as to what was overt act of assessee which led to escapement of income by reason of failure on the part of the assessee to disclose fully and truly all material facts. Assessee had made disclosure in notes of accounts about bad debts written off and expenditure utilized during the year. The revised return of income mentioned all amount withdrawn from reserve or provisions. There is absolutely no word about any failure on the part of the assessee to disclose fully and truly the material facts relevant to the two issues.

10. In the light of the aforesaid discussion, we are inclined to sustain Ground No.2 with its sub-grounds by holding that reopening is not as per law. Thus, **the appeal of the assessee is allowed** and the impugned reassessment order is quashed.

Order pronounced in the open court on 30.01.2026

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

Sd/-
(Anubhav Sharma)
JUDICIAL MEMBER

Dated 30.01.2026
Mitali, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI