

**आयकर अपीलीय अधिकरण “एक-सदस्यमामला” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” BENCH, MUMBAI**

**माननीय श्री छल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI C.N. PRASAD, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing Through Video Conferencing Mode)**

1. आयकरअपील सं./ I.T.A. No. 994/Mum/2020  
 (निर्धारण वर्ष / Assessment Year: 2009-10)

<b>ITO – 23(1)(6)</b> R. No. 203, 2 <sup>nd</sup> floor Earnest House, Nariman Point, Mumbai-400 021	<b>बनाम</b> / Vs.	<b>Anish Kantilal Jain</b> Nimesh Medical Corporation, R.No.7, Bangle House, 2/22, Babu Genu Road, Mumbai-400 002
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. <b>AAAPJ-6238-M</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Revenue by</b>	:	Ms. Smita Varma– Ld. Sr. DR
<b>Assessee by</b>	:	None

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	02/09/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	02/09/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by Revenue for AY 2009-10 arises out of the order of Ld. Commissioner of Income Tax (Appeals)-29 Mumbai [CIT(A)] dated 25/11/2019 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) r.w.s. 147 on 23/03/2015. The Ld. CIT(A) has granted partial relief to the assessee on account of alleged bogus purchases against which the revenue is in further appeal before us.

2. At the time of hearing, none appeared for assessee. However, the material on record was sufficient for disposal of the appeal. The Ld. DR pleaded for restoration of assessment as framed by Ld. AO. The assessee being resident individual is stated to be engaged in trading under proprietorship concern namely M/s Nimish Pharma Chem.

3. The case was reopened pursuant to receipt of certain information from Sales Tax Department, Maharashtra on the basis of which it was alleged that the assessee made suspicious purchases of Rs.16.42 Lacs from various entities. Though the assessee filed ledger extract as well as bank statements evidencing payment through banking channel, it failed to produce any of the supplier for confirmation of account. The Ld. AO worked out peak credit against these purchases for Rs.12.39 Lacs and added the same to the income of the assessee u/s 69C.

4. The Ld. CIT(A), after considering assessee's submissions, concurred that sales turnover was not under doubt and therefore, the peak additions were not justified. Finally, relying upon the decision of Hon'ble Gujarat High Court in **CIT V/s Simit P. Sheth (356 ITR 451)**, the estimation was made @12.5% against which the revenue is in further appeal before us.

5. After going through impugned order, we find that Ld. CIT(A) has clinched the issue in the right perspective. The sale was not under doubt and there could be no sale without actual purchase of material keeping in view the fact that the assessee was engaged in trading activities. Therefore, the estimation of 12.5% was quite fair & reasonable. Finding no reason to interfere in the impugned order, we dismiss the appeal.

6. In the result, the appeal stands dismissed.

*Order pronounced on 02<sup>nd</sup> September, 2021.*

**Sd/-**  
**(C. N. Prasad)**  
न्यायिक सदस्य / **Judicial Member**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 02/09/2021  
Sr.PS, Dhananjay

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**