R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 307 OF 2017

Pr. Commissioner of Income Tax - 24 .. Appellant

Versus

M/s. Cream Jewellery .. Respondent

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- Mr. Sham Walve for the Appellant

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CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.

DATE : APRIL 16, 2019.

P.C.:

1. This appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal, Mumbai ("the Tribunal" for short).

2. Following question is presented for our consideration:-

> "Whether on the facts and circumstances of the case and in law, the Tribunal was right in allowing deduction u/S. 10A of the I.T. Act, 1961 ignoring the fact that Section 10A(2)(iii) clearly states that the undertaking should not be formed by the transfer to a new business of machinery and plant previously used for any purpose?"

3. Respondent – assessee in the return of income filed for the assessment year 2008-09 had claimed deduction under

Section 10A of the Income Tax Act ("the Act" for short) which the Assessing Officer denied on the ground that the undertaking was formed by the transfer to a new business of machinery and plant previously used for any purpose. CIT(A) allowed the appeal of the assessee upon which the issue reached the Tribunal. The Tribunal by the impugned judgment, while dismissing the Revenue's appeal held and observed as under:-

> "7. After considering the relevant finding given in the impugned orders and also the decisions relied upon by the Ld. Counsel, we find that the AO has denied the exemption on the ground that undertaking has been formed by transfer of 'undertaking' from M/s Cream Jewellery Pvt Ltd to the assessee firm, vide, 'Deed of Transfer' dated 26.11.2006, therefore, a new undertaking with new business has come into existence and therefore, assessee was not eligible for claim of deduction u/s 10A. As culled out from the records Ld. CIT(A) has given a finding of fact that the transfer of the undertaking was as a going concern at its book value and same business which was already in existence continued even after change of ownership from Private Limited Company to Partnership Firm. There was continuation of some business activities with some undertaking. The Hon'ble jurisdictional High Court on similar issue and circumstanced has held that *where a running business is transferred lock, stock and barrel by one assessee to another assessee, the principle of reconstruction, splitting up and transfer of plant machinery cannot be applied*. The benefit of section 10A is attached to an undertaking and not to the assessee who owns the undertaking, therefore, assessee

> is entitled for exemption u/s 10A. Similar view was taken by the Madras High Court in the case of CIT vs Heartland KG Information Ltd (*supra*). Thus, in view of the legal proposition as upheld by the jurisdictional High Court, the observation and finding of the CIT(A) is hereby affirmed and grounds raised by the revenue are dismissed."

4. From the record, it can be said that the Revenue's objection emerges from the fact that the unit in question was transferred as going concern, entire business was transferred to the new owner who claimed continued benefit under Section 10A of the Act. This issue is squarely covered by the decision of Division Bench of this Court in the case of **CIT Vs. Sonata Software Ltd**[1]. It was held that sale of business was not a reconstruction within the meaning of Section 10A of the Act.

5. No question of law, therefore, arises. Income Tax Appeal is dismissed.

[SARANG V. KOTWAL, J.] **[AKIL KURESHI, J]**

1 [2012] 343 ITR 397 (Bom)