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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 80/2009**

SIGMA FREDUDENBERG NOK PVT. LTD ..... Appellant

Through: Mr.Saurav Sood and Mr. Shashank Sharma, Advocates.

versus

COMMISSIONER OF INCOME TAX DELHI & ANR.... Respondents

Through: Mr. Deepak Anand, Advocate, Jr.Standing Counsel for Mr.Zoheb Hossain, Advocate, Sr.Standing Counsel.

\+ **ITA 649/2009**

SIGMA FREUDENBERG NOK PVT. LTD. ..... Appellant

Through: Mr.Saurav Sood and Mr. Shashank Sharma, Advocates.

versus

COMMISSIONER OF INCOME TAX & ANR...... Respondents

Through: Mr. Deepak Anand, Advocate, Jr.Standing Counsel for Mr.Zoheb Hossain, Advocate, Sr.Standing Counsel.

\+ **ITA 1046/2010**

SIGMA FREUDENBERG NOK PVT LTD ..... Appellant

Through: Mr.Saurav Sood and Mr. Shashank Sharma, Advocates.

versus

COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr. Deepak Anand, Advocate, Jr.Standing Counsel for Mr.Zoheb Hossain, Advocate, Sr.Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

<u>O R D E R</u>

% **24.04.2019**

C.M.APPL.18833/2019 (for restoration) in ITA 80/2009
C.M.APPL.18834/2019 (for restoration) in ITA 649/2009
C.M.APPL.18835/2019 (for restoration) in ITA 1046/2009

The appellant in these appeals seeks restoration in view of the order made on 20th September, 2018. These three appeals are for the years 2003-04, 2004-05 and 2005-06. The Court had recorded the appellant/assessee's statement that since the amounts involved were small and the tax effect even less, they would not press the appeals; at the same time, it had been indicated that in case of change in the circumstances later, it is open for the appellants to revive the appeal.

It is urged on behalf of the assessee that in the subsequent order, i.e. for A.Y.2016-17, the Assessing Officer has again followed the reasoning, which persuaded him to attribute 25% of royalty as the income assessable in the hands of the assessee which ought to be brought to tax. It is submitted that this prejudiced the assessee as the order of 20th September, 2018 to that extent precludes the assessee from urging the question on the merits of the error in attribution of 25%.

This Court is of the opinion that the applicant/assessee's right to question the attribution of 25%, and other matters connected with it, can be gone into for later years in the appeal proceedings, unhindered by the withdrawal of its appeal recorded by the order dated 20th September, 2018. In other words, the CIT(A) shall examine the merits of the assessee's contentions and not merely rest the reasoning on the basis of the said order of this Court, permitting withdrawal.

The applications are disposed of in light of the above clarification.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

APRIL 24, 2019/*mr*