IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'B', HYDERABAD

BEFORE SHRI D.MANMOHAN, VICE PRESIDENT
AND SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.252/Hyd/2012	:	Assessment Year 2008-09
ITA No.731/Hyd/2014	:	Assessment year 2009-10
ITA No.732/Hyd/2014	:	Assessment year 2010-11

M/s. Orient Blackswan Private Limited, Hyderabad **(PAN – AAACO 2722 Q)**	V/s	Asstt. Commissioner of Income-tax Circle 16(3), Hyderabad
(Appellant)		(Respondent)

Appellant by	**:**	*Shri A.V.Sadasiva &* *Shri MV Anil Kumar*
Respondent by	*:*	*Shri K.J.Rao &* *Smt.U. Minichandran*

Date of Hearing	22.6.2016
Date of Pronouncement	06.07.2016

O R D E R

Per Pradip Kumar Kedia, Accountant Member :

These three appeals filed by the assessee are directed against similar but separate orders of the Commissioner of Income-tax(Appeals) V, Hyderabad dated 21.12.2011 for the assessment years 2008-09 and dated 31.10.2013 for the assessment years 2009-10 and 2010-11. Since common issues are involved in these appeals involving common factual background, these appeals are being disposed of by this common order for the sake of convenience.

Condonation :

2. At the outset, it may be noted that there is a delay of 69 days in the filing of the appeals for the assessment years 2009-10 and

2010-11, for which condonation petitions, accompanied by affidavits in support thereof, have been filed by the assessee for admission of belated appeals. The assessee has made out a case that the delay occurred is not intentional or deliberate. The small delay has not caused any prejudice to other side either. Considering the reasons for the delay narrated in the said petitions, we are convinced that sufficient cause for the delay in the filing of these appeals exists. No mala fide can be imputed in the cause narrated. Cause of substantial justice deserves to be preferred over technical considerations in the facts of the present case. We accordingly condone the delay in terms of S.253(5) of the Act and proceed to dispose of these appeals on merits.

3. Solitary issue arising for consideration in all these appeals is whether the compensatory sum received in terms of settlement agreement for not using the word 'Longman' in the name or trade mark of the assessee is business income or a capital receipt not liable to tax.

4. Facts of the case relevant to the issue in dispute, as taken from the appeal for the assessment year 2008-09, are that the assessee company is engaged in the business of publishing and trading of educational and academic books on its own as well as on behalf of other publishers for which the assessee earns commission. For the financial year 2007-08 relevant to assessment year 2008-09, the assessee originally filed return of income under S.139(1) of the Act disclosing total income of Rs.6,18,83,754 under the normal provisions of the Income Tax Act,1961 and book profit of Rs.6,30,10,217 for the purposes of S.115JB of the Act. Subsequently, however, the assessee revised the said return on 9.3.2009, admitting total income under the

normal provisions of the Act of Rs.80,56,646 only and book profit of Rs.6,01,46,772 only. The case was reopened by issuance of a notice under S.148 of the Act on 1.12.2009 on the belief that income to the extent of Rs.5,38,27,108 chargeable to tax has escaped assessment due to revision of return.

4.1. During the year under consideration, the assessee received an amount of Rs.5,38,27,108 as compensation in terms of settlement agreement dated 22.11.2007 from M/s. Longman Communications Limited, London(LCL), which is presently known as Pearson Group. The LCL was stated to be taken over by the Pearson Group, U.K. The assessee was previously named and styled as Orient Longman Pvt. Ltd. The assessee was required to change the name of the entity excluding the word 'Longman' as per a Tomlin Order. Accordingly, the name of this assessee was changed to Orient Blackswan Pvt. Ltd. The genesis of the present dispute lies in a trade mark held by the assessee in the name of 'ORIENT LONGMAN' . The assessee had registered the trade mark with the Trade Marks authority in India since in 1980. As submitted, there were pending disputes regarding the use of the trade marks and use of the name 'Longman' by the assessee in the courts of United Kingdom and India. Subsequently, these disputes were stated to be settled by means of a settlement agreement dated 22.11.2007 between Pearson group and assessee, followed by a compromise order known as 'Tomlin Order' passed by the High Court of Justice, Chancery Division U.K. giving effect to the settlement agreement dated 22.11.2007. As per this agreement, the assessee has undertaken not to use any trade mark or trade marks which include the word 'Longman' or any word or phrase confusingly similar to the word 'Longman' in India or any where in the world. The assessee and its associate entities were obliged to cancel or surrender

the registration of exiting trade mark after the expiry of some time frame referred as 'primary period ' and 'secondary period' as per settlement agreement. Similarly, the Person Group on its part undertook that it shall not use the name 'Longman' in combination with the name 'Orient' or any name confusingly similar to name 'Orient' in India or anywhere else in the world. Hence, the assessee was estopped from using the trade mark which includes the word 'Longman' and similarly, the Longman Group or Pearson Group were estopped from using the word 'Orient' in combination with 'Longman'. A 'Tomlin order' as per consent terms of the parties set out in the settlement agreement was passed by the U.K. Court in this regard. Under the terms of settlement deed, the assessee was entitled to receive a sum quantified at Rs.16,14,81,323 in aggregate towards impugned settlement. This amount was agreed to be paid to the assessee in three equal instalments of Rs.5,38,27,108, with the first instalment becoming receivable by the assessee within five working days from the settlement date, second instalment on 21.11.2008 (falling in assessment year 2009-10) and the last one on 23.11.2009 (falling in assessment year 2011-12). In pursuance of the settlement agreement, the assessee received first instalment of Rs.5,38,27,108 from Orient Longman Communications during the previous year relevant to assessment year 2008-09. Similarly balance instalments were received in subsequent assessment years as agreed.

4.2 In the original return filed on 22.9.2008, this amount was considered as 'business income' by the assessee. However subsequently this amount was withdrawn by the assessee from the ambit of chargeability by filing a revised return on 9.3.2009 on the ground that it is a capital receipt not forming part of the total income. It is in this background, the case was reopened alleging escapement.

A query was raised by the Assessing Officer in the course of re-assessment proceedings as to why the impugned amount of Rs.5,38,27,108 received from Pearson Group during the relevant assessment year, viz. 2008-09 should not be treated as business income in view of the recently inserted provisions of S.28(va) of the Act.

4.3. In reply, the assessee inter alia contended that the consideration was received as per the settlement agreement and vetted by Tomlin order of the Court of U.K. in consideration of restraining the assessee from the use of the name 'Longman' and as such, it is a capital receipt not liable to tax at all. Assessee filed submissions on this aspect before the Assessing Officer, which are noted hereunder-

> **"5. During the course of assessment proceedings, vide order sheet entry dated 03.11.2010 the assessee was asked to explain how the amount of Rs.5,38,27,108/- received from M/s Longman Group was not treated as revenue receipt but treated as capital receipt keeping in view theprovisionsofSec.28 of the 1. T. Act:**
>
> **5.1 In response. the assessee furnished a note contending as under:**
>
> ***"The provisions of sec 28 of the Income tax Act, 1961 do not apply to the facts of the case. Section 28 of the Act starts by stating that "the following incomes shall be chargeable to income tax under the head "profits and gains of business or profession' ... Va any sum, whether received or receivable, in cash or kind, under an agreement for –***
>
> ***(a) Not carrying out any activity in relation to any business: or***

(b) Not sharing any know-how, patent, copyright, trade-mark, license, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provisions for services;

Any sum, whether received or receivable, in cash or kind, on account of transfer of the right to manufacture, produce or process any article or tiling or right to carry on any business, which is chargeable under the head "Capital Gains ",

Thus it can be seen that the categories of items to be charged under the head profits and gains of business should ab-initio be in the nature of income".

As explained earlier the consideration for the payment was having its origin in an order passed by the High Court of justice Chancery division given effect to the settlement agreement dated 22.11.2007. The settlement agreement was regarding the use of trademark and the use of the name 'Longman' by Orient Longman. Since this is an agreement for restraint on trading, the decision of House of Lords, which the Honourable S.C. of India followed in many cases in the case of Beak (Inspector of Taxes) Vs. Robson 1943 1J ITR 23 (Supp) (HL) squarely applies wherein it was hold that such receipts were capital receipts.

Similarly, the Honourable S.C. in Maharaja Chintamani Saran Nath Sahoeo Vs. CIT 1961 41 ITR 506 (SC) held that license fees given under right to enter upon land and mine the land was capital receipt. It may also be submitted that there is no transfer of a 'trade mark' or a license as such but a settlement of the right to acquire a 'trade mark' or register a trademark by Orient Longman (now Orient Blackswan). "

4.4. The Assessing Officer however observed that the provisions of S.28(va) have been inserted in the Income Tax Act,1961 with effect from 1.4.2003 relevant to assessment year 2003-04 onwards . The aforesaid provision has superseded rulings of various judicial fora which held that a sum received for a restrictive covenant is capital receipt. The Assessing Officer therefore took a view that after the insertion of clause (va) to S.28, the law has changed its

course and such receipts are liable to be taxed as revenue receipts. He accordingly rejected the contention of the assessee that the receipt in question are capital in nature. He accordingly brought the aforesaid receipt to tax as business income of the assessee.

5. Aggrieved thereby, the assessee preferred appeal before the CIT(A). The assessee reiterated that the amount received from Longman Group is towards restraining the assessee from using the name 'Longman' is in the nature of a capital receipt and such receipts are therefore not covered within the ambit of S.28(va)(b) of the Act. It was submitted before the CIT(A) that all capital receipts are not automatically converted into revenue receipts under the provisions of S.28(va).

5.1. The CIT(A) cited case-laws as recorded in para 4.4 of his order and held that the impugned receipts arose as compensation in the course of business and are in the nature of a revenue receipt. The CIT(A) also examined the matter from a different perspective. He noted that when a person registers or purchases a trade mark, the expenditure incurred for this purpose would fall within the class of revenue expenditure as it does not create an asset. Thereafter the CIT(A) examined the issue with reference to the settlement agreement and came to the conclusion that the settlement agreement vetted by the Tomlin Order of the U.K. Court does not come in the way of carrying on of the business of the assessee at all. It was observed that there is absolutely no covenant or restriction on the assessee to print books or to engage in the business in which it is already engaged. The CIT(A) noted that from the agreement, it emerges that only after the specified period, the assessee company shall not use the words 'Orient Longman' or the word 'Longman'.

5.2 The CIT(A) thereafter observed that the assessee was not being allowed to use the word 'Longman' because the Pearson Group of UK which has originally owned the assessee company and has its trade mark 'Longman' has sold its entire share holding in the assessee company to the directors of the assessee company. Therefore, the real transaction is that of the sale of shareholding of the Pearson Group in the assessee company. Hence, the real owner of the trade mark was Pearson Group and once they have no stake in the assessee company, they wanted that after a fixed time frame, the assessee company is not entitled to use the word 'Longman' in its name. In these circumstances, in three equal instalments of Rs.5.38 cores each, compensation was agreed to be paid to the assessee company.

5.3 The CIT(A) observed that in the light of the aforesaid factual background, there is no restrictive covenant on the assessee to carry on the trade or business of the assessee *per se*. The CIT(A) concluded that in view of clause (va) of S.28, receipts in the nature of non-compete fee and fees for exclusivity rights have been brought within the purview of taxation with effect from assessment year 2003-04.

5.4 On these premises, the CIT(A) confirmed the action of the Assessing Officer.

6. Aggrieved by the order of the CIT(A), assessee preferred second appeal before this Tribunal.

7. Learned Authorised Representative, Shri A.V.Sadasiva, at the outset submitted that the Assessing Officer has wrongly invoked the provisions of S.28(va)(b) to include the sum received in terms of

the Settlement agreement/Tomlin Order of U.K. Court within the purview of taxation. He submitted that the assessee company is engaged in the business of publishing and trading in educational and academic books and a trade mark was registered with the Indian authorities in 1980 in the name of 'Orient Longman' and the trade mark encompasses the word 'Longman'. The learned AR submitted that the controversy revolves around the nature of receipt emanating from the settlement agreement with Longman Communications Ltd., London, which is presently known as Pearson Group. He submitted that such receipts were bestowed on the assessee towards foregoing the right to use the trade mark or trade marks, which include the word 'Longman' and any word or phrase confusingly similar to the word 'Longman' in India or anywhere else in the world. In consideration thereto, M/s. Pearson Group had agreed to pay Rs.16,14,81,323 in aggregate in three equal annual intalments of Rs.5,38,27,108 each falling in three successive assessment years under appeal. The learned Authorised Representative submitted that these receipts cannot be considered as revenue income in nature of business income in the facts of the case as such receipts do not fall within the purview of S.28(va) of the Act. Learned Authorised Representative submitted that the aforesaid amount has not been received towards sharing any trade mark ('Orient Longman') or any commercial rights etc. towards provision of services so as to come within the clutches of S.28(va) of the Act. He emphasised that while the assessee is prohibited to use the word 'Longman" in its trade mark, the other party in the settlement agreement is also not entitled to use the word 'Orient'. Therefore, essentially, the compensation was not derived for ot sharing the trade mark *per se*. The learned Authorised Representative emphasised that the assessee is entitled to use the word 'Orient', which the other party shall not be entitled to use or share. He next

stridently contended that in order to fall within the purview of (via) of S.28, the receipt must be in the nature of income which is chargeable to tax under the head 'profits and gains of business or profession'. The learned Authorised Representative vociferously contended that the receipt is inherently in the nature of a capital receipt and not a revenue receipt and therefore, there is no scope for taxing the sum as income chargeable to tax. Secondly, it was contended that the receipt has not arisen in the course of business or trade in order to be taxed under the head 'profits and gains of business or profession'. The compensation has been received by it for abstaining to use a part of trade mark i.e. the word 'Longman' which does not *per se* results in any transfer of any trade mark to other party. In substance, the learned Authorised Representative exhorted that this provision applies to a receipt in consideration of not sharing of a patent or a trade mark or rights of similar nature, which is not the case here and therefore, a receipt, which is otherwise capital in nature cannot be taxed by virtue of S.28(va) of the Act.

8. Without prejudice and notwithstanding the fact that the provisions of S.55(2) have not been invoked by the Revenue, the learned AR submitted that there is no 'transfer' of any trade mark per se. Therefore there is no such relinquishment of right to use the trade mark in favour of the Pearson Group and therefore, in the absence of any transfer, the provisions relating to capital gains are not attracted. He submitted that a capital receipt, which does not involve transfer of a capital asset and which does not have any perceptible cost of acquisition is clearly free from the levy capital gains tax in the light of the decision of the Apex Court in the case of B.C.Srinivasa Setty (128 ITR 294)(SC). On the issue of receipt of compensation towards loss due to a restrictive covenant being a receipt of capital nature, he

heavily relied upon the decision of the Hon'ble Supreme Court in the case of CIT V/s. BEST & Co.(60 ITR 1). He submitted that in that case, the question of compensation received due to loss of agency business was discussed by the Hon'ble Supreme Court which has useful application in the present case. In that case, the receipt arose on account of loss of particular agency out of several agencies, which was in the course of and incidental to the ordinary business and therefore, was held to be a revenue receipt in nature. However, where the amount is received owing to loss of any enduring asset, it would be in the nature of capital receipt as observed by the Supreme Court. In the instant case, the compromise order resulted in the loss of an enduring asset and hence, the receipt in question is a capital asset.

9. Per contra, the Learned Departmental Representative vehemently supported the orders of the authorities below. He submitted that the amount has been clearly received in consideration of losing the right to use the word 'Longman' and this clearly falls within the provisions of S.28(va)(b) of the Act inserted with effect from assessment year 2003-04 with an objective to tax such receipts. The Learned Departmental Representative further submitted that a reading of settlement agreement would show that the assessee has been permitted to use the word 'Longman' until the expiry of the primary period and it is also entitled to use the term 'Formerly Orient Longman' until the expiry of the secondary period. Therefore, the assessee continues to enjoy the word 'Longman' on the one hand and has received the consideration on the other hand. The Learned Departmental Representative heavily relied upon the provisions of sub-section (va) of S.28 to submit that the consideration has been received towards not sharing trade mark or any other business or commercial rights of similar nature. The Learned Departmental Representative

submitted that the case-laws relied upon by the learned Authorised Representative relate to the assessment years prior to the insertion of sub-section (va) of S.28 and therefore are of no relevance in the present context. The impugned receipts squarely falls within the ambit of S.28(va). He therefore pleaded that no interference is called for.

10. We have carefully considered the rival submissions, the orders of the authorities below and the material and documents as referred to us by the parties in the course of hearing and also the case-laws cited at bar. The assessee in the instant case has received certain consideration as noted above, by virtue of settlement agreement entered into with Pearson Group. The settlement agreement was vetted by the Tomlin Order of the U.K. Court. In terms of the settlement agreement the assessee or its associates shall not be entitled to use the word 'Longman' while carrying on their business in the field of printing and publishing. It is the case on behalf of the assessee that the trade mark obtained is styled as 'Orient Longman' and not 'Longman'. The assessee in terms of the settlement agreement is required to drop the word 'Longman', while its right to use the word 'Orient' which is integral part of the trade mark has not been parted with. Likewise without prejudice to the right of Pearson Group to use the word 'Longman' it will not be entitled to use the word 'Longman' in combination with the word 'Orient' or any name confusingly similar to the name 'Orient' in India or any where else in the world. In this background the question that arises for our consideration is whether the amount received in consideration of losing the right to use the word 'Longman' which is part of its trade mark hitherto is an income chargeable to income-tax under the head 'Profits and gains of business or profession' in terms of S.28(va) of the Act or not.

10.1 Since the issue revolves around the applicability of S.28(va) of the Act, it will be apt to reproduce the relevant portion of the provision hereunder-

> **"28. Profits and gains of business or profession**
>
> **The following income shall be chargeable to income- tax under the head" Profits and gains of business or profession",-**
>
> **(i) to (v) …….**
>
> ***(va)* any sum, whether received or receivable, in cash or kind, under an agreement for—**
>
> > **(*a*) not carrying out any activity in relation to any business; or**
> >
> > **(*b*) not sharing any know-how, patent, copyright, trade-mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services:**
>
> **Provided that ……**
>
> ***Explanation.*—For the purposes of this clause,……"**

10.2 The sub-clause (a) applies to receipts in the nature of non- compete fee with which we are not concerned in the present case. The applicability or otherwise of sub clause (b) is in question. It is trite that capital receipts are not chargeable to tax save and except express provision for taxability in this regard. Therefore, a capital receipt can be brought to taxation only when such receipts strictly falls within the purview of such provision which in the instant case is S. 28(va)(b) of the Act. While the revenue holds that such receipts falls under the provision of S. 28(va)(b) of the Act, the case of the assessee is three fold. Firstly, the receipt is not an income to trigger section 28 of the Act. Secondly, the alleged receipt did not arise in the course of trade or business per se and therefore not a business receipt. Thirdly, trade mark is registered in the name of 'ORIENT LONGMAN' and when the word 'ORIENT' which is integral part of the trademark continues to be available to the Assessee for its commercial exploitation as going

concern, the question of sharing of trade mark or otherwise does not arise at all. It is the case of the assessee that the trade mark 'ORIENT LONGMAN' can neither be used by the assessee nor by the Longman/ Pearson group. The trade mark per se has not been released in favour of Pearson group. As a result of the settlement, while the word 'Orient' will be exclusively available to the assessee, the right to use of other word 'Longman' will stand extinguished. It will be relevant to extract the relevant obligation clauses of each party to the agreement.

" 5 Orients' obligations:

5.1 Reference in this Clause to using any trade mark, name or sign shall be deemed to include using such mark, name or sign in any language or script.

5.2 Without prejudice to Clause 4.2, Orient, JKR and NRR shall and undertake to procure that their Associated Entities shall:

(a) not use any of the Trade marks or any trade mark which includes the word "Longman": or any word or phrase confusingly similar to the word "Longman" in India or anywhere else in the world after expiry of the Secondary Period and shall procure that the registration of the trade marks is cancelled or surrendered as soon as reasonably practicable thereafter.

(b) not use the Orient Longman Name or any name which includes the word "Longman" or any word or phrase confusingly similar to the word "Longman": in India or anywhere else in the world after expiry of the Primary Period, but Orient may, at its absolute discretion, continue to use the term "formerly Orient Longman:" and./or "formerly Orient Longman Private Limited:" until the expiry of the Secondary Period. after which it shall not use either term or any confusingly similar term in India or any where else in the world.

(c) and to provide PEL a copy of the certificate granted by the ROC for the new corporate name as soon as reasonably practicable following receipt of the same.

(d) in any event not hereafter use the name or sign 'Longman:" or "OL" or any name or sign confusingly similar to the name or sign "Longman" or "OL" in India or anywhere else in the world for any purpose after the expiry of the Secondary Period

(e) not hereafter assign, licence or grant nay rights to anyone in any of the Trade marks the Orient Lognman Name or the Orient domain name and shall it purport to do so.

(f) not print any books under the Orient Longman Name, whether under licence from any third party or in its own publications, after 31 July, 2008.

(g) not reprint any more books under licence from PEL and/or LCL from and including 1 December 2007 and it is hereby agreed that all reprint licences granted to Orient by PEL and /or LCL are terminated with effect from 1 December 2007;

(h) procure that it sells all its books printed under licence from PEL and/or LCL by no later than the date of the expiry of the Primary Period failing which it shall destroy those books as soon as reasonably practicable thereafter unless PEL and/or LCL provide their express written consent for Orient to sell the remaining printed books thereafter.

(i) not hereafter print or stockpile any publications bearing the Orient Longman imprint in quantities exceeding those it would ordinarily print or stockpile in the normal course of business.

(j) not subject to any rights that orient may have under Clause 6.2, seek to challenge PEL's., LCL's, DKL's or any Associated Entities use of the "Longman" name nor seek to oppose, challenge , revoke or invalidate any of their trade marks or trade ark applications in any way in India or in any other jurisdiction in so far as Orient, JKR and NRR may be so bound under the laws of England and Wales. Orient JKR and/or NRR shall consent to any trade mark application made by PEL,

LCL or DKL in India or elsewhere for any mark incorporating the 'Longman" name if such consent be required in order for the trade mark application to be granted.

() not use Orient's domain name after expiry of the Primary Period save that until expiry of the Secondary Period. Orient may use the Orient domain name for the sole purpose of redirecting internet users to Orient's new website; and they shall not use Orient's domain name at all after the expiry of secondary period and shall procure that the registration of the Orient domain name is cancelled as soon as reasonably practicable thereafter;

(m) not hereafter apply for or register any trade mark, internet domain name, corporate name or business name in India or anywhere else in the world which incorporates the name "Longman" or any name confusingly similar thereto.

(n) not hereafter procure or otherwise knowingly take any positive step to authorise or entitle anyone else to do any of the aforesaid (save as required above)

" 6 Pearsons' obligations:

6.1 Pearson shall procure that:

(a) it pays, as Orient may direct, the Settlement Sum to the Designated account (or such other account as Orient may direct in writing) in three equal instalments of 53,827,108 Indian Rupees within 5 working days of the settlement date, 22 November 2008 and 23 November 2009 respectively;

(b) it transfers the entire legal and beneficial ownership in the Shares for no consideration to the recipient or recipients (hereinafter referred to as the "Orient Shareholder") as directed by a resolution of the board of Orient within 21 days of receiving a copy of such resolution and subject to the laws and regulations pertaining to the transfer of shares from a non-resident party in India or Sri Lanka;

(c) it does not, pending the transfer of the Shares, exercise or purport to exercise any rights that it may have as a shareholder in Orient;

(d) Its representative directors, namely John Crowther Makinson and Peter James Field resign within 5 working days from the board of directors of Orient and all Parties agree to take all such steps as are necessary to effect their resignations.

6.2 Pearson undertakes that:

(a) Without prejudice to its right to use the "Longman" name it will not at any time attempt to use the name "Longman" in combination with the name "Orient" or with any name confusingly similar to the name "Orient" in India or anywhere else in the world for any purpose and it undertakes to procure that none of its Associated Entities, whether now or in the future, will, at any time, attempt to sue the name "Longman" in combination with the name "Orient" or with any name confusingly similar to the name "Orient" in India or anywhere else in the world for any purpose:

(b) It will not at any time attempt to sue the Trade Marks or any other trade marks registered in India by Orient including but not limited to registration number 306385 in India or anywhere else in the world for any purpose and it undertakes to procure that none of its Associated Entities, whether now or in the future, will at any time attempt to sue the said trade marks in India or anywhere else in the world for purpose;

(c) It will not at any time seek to register a domain name under the name "Orient Longman" or any name in the form "Longman" in combination with the name "Orient" or with any name confusingly similar to the name "Orient".

6.3 Pearson hereby irrevocably waives any and all rights, whether contemplated or not, to the payment of any dividend, royalty or other payment that may be due by Orient that arises out of or in connection with its Shares in Orient, Orient's printed publications under license, and Orient's distribution of any Pearson's book.

6.4 For the avoidance of doubt, Pearson shall have no objection to Orient making the necessary modifications/ amendments to Orient's Articles of Association as may be legally required to ensure that Pearson's right if any in the existing Memorandum and Articles of Association are removed / deleted."

From the above, it can be noticed that the agreement was towards settling various disputes on the use of name ' Longman' and does not relate to any transfer of trade mark etc. While the assessee is precluded from using the name 'Longman', the corresponding Pearson Group is also precluded from using the name 'Orient'. Thus, mutual obligations exists on both parties to the agreement.

10.3 We note that the settlement agreement has not been entered into in the ordinary course of business, therefore compensation received under a negative covenant for impairment of right to use the word 'LONGMAN' is in the nature of capital receipt. We find support for this proposition from the decision of coordinate bench in case of Govindbhai C. Patel vs. Dy. CIT Ahmedabad bench 1 ITR 34 (2010) wherein it was held that compensation received towards relinquishment of the assessee's right to sue it in the Court of law cannot be treated as revenue receipt taxable as business income under S. 28(va). The decision in the case of Best & Co. 60 ITR 1 (SC) and Guffic Chem. 332 ITR 602 referred to on behalf of the Assessee lays down that a capital receipt is not taxable in the hands of Assessee. Hence, such receipt towards relinquishment of right to use word 'LONGMAN' cannot be taxed unless it is shown that it falls within the purview of section 28(va)(b) of the Act.

10.4 To determine the applicability of S. 28(va)(b) in the context of the facts of the present case, We notice that the assessee

has been restrained from using the word 'Longman' by the court from doing so. As a sequel to the court order, the assessee is required to cancel the trade mark. The trade mark is no longer available for use by the assessee. Notwithstanding the fact that certain capital receipts have brought to tax as chargeable income under S. 28(va) of the Act, the extended meaning of taxable income is controlled by the words 'not sharing'. Section 28(va)(b) only deals with payment received for not sharing trade mark etc. this would presuppose that the assessee should own the trade mark and for a given consideration, has agreed no to share it with any other person. The word 'sharing' postulates there must be someone to use the trade mark. But in the present case, the sharing or otherwise is not possible when trade mark itself ceases to exist.

10.5 Hence, in the totality of circumstances, we are of the view that the payment received cannot be brought to tax as business income under section 28(va). Hence, we find merit in the appeal of the assessee.

11. In the result, appeal of the assessee for assessment year 2008-09, being ITA No.252/Hyd/2012 is allowed.

12. As noted above, facts of teh case for the assessment years 2009-10 and 2010-11 being identical, the reasoning noted herein above, while disposing of appeal for assessment year 2008-09, ITA No.252/Hyd/2012, will apply mutatis mutandis to these appeals also. For the parity of reasoning, the appeals ITA No.731 &732/Hyd/2014 for assessment years 2009-10 and 2010-11 are also stands allowed.

13. In the result, all the appeals of the Assessee are allowed.

Pronounced accordingly in the open court on 06.07.2016.

Sd/-/-	**Sd/-/-**
(D.Manmohan)	**(Pradip Kumar Kedia)**
Vice President	**Accountant Member**

Dt/- 06th July, 2016.

Copy forwarded to:

1. M/s. Orient Blackswan Private Limited,
   C/o. M/s. M.Anandam & Co., Chartered Accountants
   7A Surya Towers, S.D. Road, Secunderabad .
2. Dy. Commissioner of Income-tax Circle 16(3), Hyderabad
3. Commissioner of Income-tax(Appeals) V, Hyderabad
4. Commissioner of Income-tax IV, Hyderabad
5. Departmental Representative ITAT, Hyderabad

B.V.S.