# Investors get tax relief on investment gains

***Once the income has been classified as either business income or capital gains, be consistent***

In a move that is likely to reduce litigations between investors and the income-tax department, the Central Board of Direct Taxes recently allowed investors to decide whether income from sale of securities is to be treated as business income or capital gains. Earlier, the assessing officer (AO) was used to make this decision. So, if there were a large number of trades or profit-booking, the AO could classify it as business income and tax it at the highest rate of 30 per cent plus applicable cess.If the gain is classified as capital gains, there is no tax.

Henceforth, if the assessee wants the income from sale of security after 12 months to be treated as capital gain, the assessing officer (AO) cannot dispute it. An important caveat: Once an assessee has chosen a certain mode of tax treatment, he can't change it in subsequent years. Says Suresh Surana, founder, RSM Astute Consulting Group: "This is a serious statement from the government towards its commitment to reducing litigation."

However, there is still scope for AOs to dispute the treatment of short-term gains. High-frequency traders, day traders and others who churn their portfolios a lot might still find themselves embroiled in disputes.

A large number of disputes arise on the subject of treatment of gains from sale of securities as capital gains versus business income due to two key reasons. One, the income tax Act does not contain specific guidelines on how to classify an investment - as capital asset or as stock-in-trade. A lot is left to case-by-case interpretation. Two, there is a wide difference in tax rate between the two modes of treatment, which provides incentive for litigation. If income is classified as long-term capital gain, the applicable tax rate is zero. On short-term capital gain (for securities held for less than a year) the rate is 15 per cent (plus cess and surcharge). On the other hand, if the AO treats it as business income, he can impose a tax rate of 30 per cent (plus surcharge and cess).

Investors can take a few precautions to reduce the possibility of disputes. One way is to invest in equities for the long term (more than a year). Second, as Rajesh H Gandhi, partner, Deloitte Haskins & Sells, suggests: "There should be no disparity between how an income is treated in your books and the tax treatment you ask for it." That is, don't indulge in opportunistic flip-flops, asking for the income to be treated as capital gain when you make gains (so you pay zero tax) and as business income when you make losses (so you can offset the loss against business gains, or carry them forward). Three, if you have invested your own funds, have documentary proof to back up your claim. If you have multiple streams of income and income from sale of securities is only one of them, it will be easier for you to get your claim accepted that the income be classified as capital gain.

The clause that once you have chosen a particular mode, you can't switch to another in subsequent years is significant. In the future, if the government imposes a tax on long-term capital gains, you will remain stuck with this mode of treatment. Do consult a tax expert before making this choice once and for all.

*(Business Standard)*