Now, Pay Only 15% Tax on Short-term Gains

Profit from sale of shares held for less than 30 days was taxed at 30% earlier as it was considered business income

There is a dim ray of hope for scores of investors who were asked to pay a higher tax for selling shares within 30 days of purchase. The Income Tax Appellate Tribunal has ruled that profits from sale of shares held for even less than 30 days are eligible to be treated as short term capital gains on which 15% tax has to be paid. Often tax officials claimed a higher tax of over 30% on the ground that since shares were sold before 30 days from the date of purchase such gains should be considered as business income and not short term capital gain. Since tax rules do not spell out the duration of holding and frequency of securities trades for tax treatment, tax officials often use their discretion to arrive at a claim. This has been a source of endless disputes between investors and tax department. The June 15 ruling by Income-tax Appellate Tribunal (ITAT), Mumbai, is the latest in a series of judicial and quasi judicial decisions on the issue of what constitutes short-term capital gains and business income. The Mumbai ITAT decision in the case of Hitesh Satish chandra Doshi followed two earlier ITAT decisions in the case of Sugandh chand Shah by Ahmedabad Bench and in the case of Sanjiv Chawla by the Mumbai Bench. In both these cases the ITAT drew a 30-day mark to distinguish between business income and short-term capital gains. The Mumbai ITAT, however, held that the statute is clear only as far as the distinction between long-term and short term capital gains is concerned. For long-term capital gains, shares have to be held for at least 12 months and profit from shares held for less than 12 months will be taxed as short-term capital gains. There is no tax on long term capital gains. But the Mumbai ITAT observed that the law does not lay down a 30-day mark to distinguish between business income and short-term capital gains. The ITAT pointed out at the whole set of parameters laid down by the Supreme Court for making the distinction between investment and trading in shares. Factors such as intention of the assessee at the time of buying shares, whether the assessee borrowed money to purchase the shares and paid interest thereon, the frequency of such purchase and disposal in that particular item, whether the purchase and sale is for realising profit or purchases are made for retention and appreciation in its value, and how the value of items has been taken in the balance sheet, are critical in whether a gain is business income or short-term capital gains. Therefore, no single factor can be said to be decisive to determine whether the nature of the transaction is trading activity or investment, the ITAT held. Each case needs to be decided on the facts of the case. Therefore, treating a transaction as investment when the holding period is more than 30 days and treating the income as business income if holding period is less than 30 days is not correct, the ITAT observed. Senior chartered accountant Tarun Ghia told ET that the criterion of 30 days in earlier two tribunal decisions was evolved with reference to facts of respective cases and not for general application.