

# 'PMS Profit's Cap Gains, not Business Income'

Tax tribunal says gains from portfolio service must be taxed at 15%, not 30%

APURV GUPTA  
MUMBAI

Gains from portfolio management services (PMS) should be taxed at a lower rate, according to Income-Tax Appellate Tribunal (ITAT), a quasi-judicial body.

In a ruling last week, the Mumbai bench of ITAT said that gains arising from PMS transactions are capital gains and not business profits. Short-term capital gains are taxed at 15%, against 30% for business income.

While the tax department had laid down the features to differentiate between the two kinds of transactions, there were grey areas that left room for interpretations by assessing officers. Thanks to conflicting rulings and views, the issue sparked multiple legal disputes in the past few years.

PMS, offered by brokerages and fund houses, are sold to HNIs who are willing to take extrarisks.

PMS industry handles funds worth ₹20,000 crore for more than 70,000 rich clients.

The ruling is expected to cheer fund managers as well as investors. According to Mohit Batra, group CEO, Alchemy Capital Management: "The clarity provided by the ruling on how PMS needs to be treated under tax will be a relief to large number of PMS investors and PMS providers. Clients do keep coming back to us to seek clarity on its tax implication."

While hearing the dispute between Radha Birju Patel, an investor, and IT department,

## The Tax Breather

PMS industry handles funds worth ₹20,000 cr for more than 70,000 wealthy clients

ITAT has supported the proposition that an investment portfolio managed by a fund manager is an investment asset in the hands of the tax-payer

Gains derived by the taxpayer from the sale of securities belonging to such an investment portfolio should be treated as capital gains, says ITAT



the ITAT ruled in favour of tax payers on the issue of characterisation of income earned on sale of securities. It supported the proposition that an investment portfolio managed by a fund manager is an investment asset in the hands of the tax payer. The gains derived by the taxpayer from the

Whether the assessee is engaged in the business of dealing in shares or investment in shares has to be seen

by the assessee's portfolio manager and items are clearly in the nature of transactions meant for maximisation of wealth rather encashing the profits on appreciation in value of shares," the ruling said.

But while the ruling favours the concerned investor in this particular case, it is not clear whether the tribunal view can serve as a benchmark for future disputes. Tribunal added that whether the assessee is engaged in the business of dealing in shares or investment in shares has to be determined according to the circumstances.

"The issue of characterisation of income from invest-

ing/ trading in securities," said Russell Gaitonde, partner, BMR Advisors, "is a mixed question of fact and law. The issue has become highly litigious, owing to a plethora of conflicting rulings on the matter. Indian courts have ruled that one would need to consider multiplicity of factors before formulating a view."

In this particular case, the assessing officer had argued that the gains are business profits as the assessee was "trading in shares and there were a large number of transactions, among others."

But the factors that went in favour of the taxpayer were, the investor was a working lady, earning a retainer fee, and chose ASKRJ to manage her funds in a discretionary PMS and had no control over the investment decisions.

But it may not come as a relief to all PMS investors, said Jiger Saiya, partner, direct tax, MZS & Associates. "The tribunal has specifically stated that the taxation would depend on facts of the case. We need to see the entire facts in order to determine whether the taxpayer is engaged in the business of trading in shares or investing in it. The tribunal has left it to the tax officer to determine taxation of such transactions on the basis of facts."