GOVERNMENT OF INDIA

MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

LOK SABHA

UNSTARRED QUESTION NO. 3281

TO BE ANSWERED ON FRIDAY THE 5th AUGUST, 2016

14 SHRAVANA, 1938 (SAKA)

CAPITAL GAINS TAX

3281: SHRI PRALHAD JOSHI:

Will the Minister of FINANCE be pleased to state:

(a) whether as recommended by the Committee on Income Tax Simplification, the Government is planning to treat income raised from sale of shares/securities as only capital gains tax in order to avoid confusion from treating it as capital gains tax or business income tax on case to case basis;

(b) if so, the details thereof; and

(c) If not, the reasons for the same?

ANSWER

(MINISTER OF STATE IN THE MINISTRY OF FINANCE)

(SHRI SANTOSH KUMAR GANGWAR)

(a) to (b): The recommendation of the Committee on Income Tax Simplification regarding treatment of income arising from sale of shares/securities has been considered by the Government. It may be mentioned that the said Committee did not recommend treating the income from sale/securities as only 'capital gain' in all cases. In fact, it examined various possible situations depending upon period of holding of the shares/securities, quantum of income arising from these transactions etc. and proposed separate tax treatment since in some situations, the matter was to be examined by the Assessing Officer keeping in view the specific facts of the case. The said Committee had recommended that in cases where shares are treated as capital assets and held for a period of twelve months or less, the surplus on sale shall not be re-characterised as 'business income' by the Assessing Officer provided the surplus during the year is Rs. five lakhs or less and taxed as 'capital gains'. In cases where the shares/securities are held for a period exceeding twelve months and treated as capital assets, the Committee had proposed that the surplus be taxed as 'capital gains' only. In other situations, the Committee had recommended that such cases may be assessed on the basis of existing principles laid down by the courts and summarised by the CBDT in its circulars.

Subsequently, the above recommendation of Income Tax Simplification Committee was examined by the CBDT and vide Circular No. 6/2016 dated 29.02.2016, it was clarified that income arising from transfer of listed shares and securities held for more than twelve months, which are treated as capital assets by the concerned taxpayer on a consistent basis, would be taxed under the head 'capital gains'. In other situations, the issue was to be decided on the basis of existing Circulars issued by CBDT on this subject. Further, vide CBDT order dated 02.05.2016 (F.No. 225/12/2016/ITA.II), it has also been clarified that the income arising from transfer of unlisted shares would always be taxable under the head 'capital gain' irrespective of the period of holding. Some of the situations where the above stated characterisation may not be applicable and would require further examination by the Assessing Officer on a case to case basis have been mentioned in the order.

The above measures are expected to bring clarity on tax-treatment of income arising from sale of shares/securities and thus, substantially reduce tax-disputes on this issue.

(c) Not applicable in view of the reply above

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