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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

NAVIGATING INCOME-TAX COMPLEXITIES IN CRYPTOCURRENCY TRANSACTIONS: ISSUES AND CHALLENGES

AUTHORED BY - ASISH KUMAR DHIR

ABSTRACT

The current age is characterized by the outbreak of virtual and digital platforms due to the rapid surge of information and communication technologies, which have seamlessly integrated many of our activities into online mode, enhancing their flexibility and efficiency. The exponential growth of modern technology has led users to explore the world of Virtual assets, commonly referred to as “Cryptocurrency”. Today with the surge in the Crypto-currency market, we are on the brink of a revolution in the global financial sector, likewise one which happened twenty-five years ago with the disruption of the internet all over the world. Simply, “Cryptocurrency” belongs to a type of digital asset or currency that not only expedites the buying, selling, and trading of various goods and services, but also in online social networking, online social gaming, virtual worlds, and peer-to-peer networks. Cryptocurrencies in India, as per Section 2 (47A) of the Income Tax Act are classified as Virtual Digital Assets and are liable to be taxed, that was introduced by Finance Act, 2022. Further, the new budget of 2022, introduced TDS provisions for the transfer of crypto-currency. However, as of now, there is no specific authority regulating the payments made through crypto-currency, which has raised an alarming concern given the growing demand for the use. This paper delves into the materiality of the implementation of tax policies and regulations to modulate the imposition of Tax on the income, gain, or profits that occur from crypto-currencies. It delves deeper into the need for a more robust regulatory framework and the need for provisions to ensure investors' security, maintain financial stability, and prevent unlawful activities. The research relies on a combination of primary and secondary sources to gather and refine the information, ensuring the production of precise knowledge. This paper also proposes relevant approaches and comprehensive solutions to address the identified challenges.

KEYWORDS

Crypto-currency, Virtual Digital Asset, Income Tax, Tax Evasion, Complexities

INTRODUCTION

Undoubtedly, the current age is of Modern technologies, Artificial Intelligence, Virtual Reality, Data Science, and whatnot. The majestic growth of information and communication technologies has created many golden opportunities in different sectors and has also evolved the homo sapiens to create an unreal world of them, which is known as the virtual world. A large number of online users, using this massive technology, has activated the concept of virtual digital assets and created a new business phenomenon altogether. Thus, new types of trading, financing, transactions, and currencies have been evolving leaving behind the traditional and orthodox methods of trading and transactions. One of the astounding financial forms that have been evident in the last few years is Cryptocurrency.

So, what does the Cryptocurrency mean? As per the definition given in Oxford, it follows as “A digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, operating independently of a central bank.”¹ As per a foreign author “Cryptocurrency is that form of currency which exists only in digital form and it is not backed by any regulating authority” Crypto’s definition can be “encrypted decentralized digital money that’s based on block chain technology and its maintenance and management have been distributed among the crypto users via the internet.”²

The emergence of these cryptocurrencies, undoubtedly, has changed the financial landscape at the global level. Cryptocurrencies such as Bitcoin, Ethereum, and numerous altcoins, are different kinds of cryptocurrencies which have very well challenged the orthodox notions of money, by decentralizing digital assets that make use of cryptographic techniques not only in fixing transactions with adequate security but also in controlling the formation of recently developed units.

After the advent of cryptocurrencies, many countries including India have experienced a remarkable increment in adoption of it and also in usage in trading over the past decade. Many people in India, mostly the young generations, have explored the potential benefits of this, and also have succeeded in accumulating a significant amount of monetary benefits from this currency. Due to not having any taxability provisions to bring the income under the gambit

¹ ‘Definition of Cryptocurrency’ (Oxford Advanced Learner’s Dictionary)
<www.oxfordlearnersdictionaries.com/definition/english/cryptocurrency> accessed 21 August 2024
² Kate Ashford, ‘What Is Cryptocurrency?’ (Forbes ADVISOR, 16 February 2023)
<<https://www.forbes.com/advisor/investing/what-is-cryptocurrency/>> accessed 22 August 2024

of taxation, there was arbitrariness in the profits and gains from these transactions of cryptocurrencies. Though people have considered this as a great source of income, still the government of India was not able to impose any tax on these incomes, hence it was also considered as a significant revenue loss from the perspective of the Indian government. Understanding these loopholes, in the Financial Budget of 2022, the finance ministry recognized it as a Virtual Digital Asset and imposed a tax at the rate of thirty % from such income without any exceptions. As per the Finance Bill of 2022, all the cryptos or virtual currencies which failed to be dealt with under the guidelines of RBI will be considered as Virtual Digital Assets which has been written in Clause Three Bill³- proposing its addition u/s Two of the Income Tax Act, 1961 (ITA).

Though few provisions have been laid out regarding the imposition of tax on profits and gains from the cryptocurrencies by the advent of regulations in RBI and the Finance Bill of 2022, still the area is very complexly structured as of now and many intricacies have been left out which must be resolved. As the transactions in cryptocurrency have become more prevalent in the last few years, it's an ultimate need to inscribe their taxation reasonably and also to prevent any kind of misuse. In this paper, the author will try to deal with all the issues and challenges that are about totally taxing cryptocurrency. By casting light on the taxation of cryptocurrencies in India, this study tries to give valuable intuition to the larger discourse on cryptocurrency regulation, investor awareness, and the overall financial ecosystem. The author hopes that the research will be useful as a significant means for policymakers, crypto investors, and researchers seeking to steer the composite and evolving landscape of cryptocurrencies in our country.

RESEARCH METHODOLOGY

This research paper adopts a descriptive methodology and draws information and statistics mostly from secondary nature of resources data. Various websites, webpages, articles, journals, and e-newspapers have been used to extract information and data. It enabled a deep understanding of the theoretical frameworks, historical background, and established knowledge regarding the taxation of cryptocurrency in India.

For an in-depth analytical study, an analytical approach was also employed to understand the

³ The Finance Bill, (2022) [18], c III cl 3(b)

intricacies of taxability on cryptocurrency. The whole foundation of this study is based on the information extracted from secondary data such as e-journals, essays and articles, online newspapers, official websites, etc. By synthesizing information from various sources, this research aims to provide valuable insights into the issues and challenges in the taxation of cryptocurrency in the country.

LITERATURE REVIEW

“**Ojha, Pohit, and Ghosh (2020)**”⁴ emphasized the importance of establishing a regulatory framework for taxing cryptocurrency transactions. Currently, the absence of specific laws or regulations for taxing cryptocurrency has created ambiguity and uncertainty for taxpayers and authorities alike. This knowledge gap underscores the necessity for more research to traverse the prospective impact of clear tax regulations on cryptocurrency transactions in India.

“**Kethineni & Cao, (2020)**”⁵. Furthermore, the tax treatment of cryptocurrency gains and losses remains a contentious issue. Currently, there is ambiguity regarding the classification of cryptocurrency for tax purpose in India. The lack of clarity on whether cryptocurrency should be treated as a currency, commodity, or property creates challenges for tax authorities in determining the appropriate tax treatment.

“**Arora, J., & kaur, L. (2024)**”⁶ –In their research paper, Arora and Kaur delve into the intricacies of the Indian taxation system concerning cryptocurrency, shedding light on a topic of growing significance in the modern financial landscape. The credibility of the authors lends weight to their findings. The study explores the evolving nature of cryptocurrencies, their acceptance as virtual digital assets under the Finance Act of 2022, and the subsequent introduction of crypto taxes. The authors dissect the various interpretations regarding the classification of cryptocurrency as a currency, commodity, or security, reflecting the diverse opinions within the financial community. Through a meticulous examination of the emerging cryptocurrency sector in the country and the regulations of the Income Tax Act, 1961, Arora and Kaur provide insights into the taxation framework governing cryptocurrency transactions.

⁴ Ojha, V.P. Pohit, Ghosh, ‘Recycling carbon tax for Inclusive Green Growth: A CGE analysis of India’ (2020) Energy Policy < <https://doi.org/10.1016/j.enpol.2020.111708>> accessed 23 August 2024

⁵ Sessa Kethineni, Ying Cao, ‘The Rise in Popularity of Cryptocurrency and Associated Criminal Activity’ (2019) 30 (3) International Criminal Justice Review <<https://doi.org/10.1177/1057567719827051>> accessed 23 August 2024

⁶ Jyoti Arora, Lakhwinder Kaur ‘A study of the Indian taxation system on cryptocurrency’ (2023) 18 (1) Gyan Management Journal < <https://doi.org/10.48165/gmj.2023.18.1.5>> accessed 23 August 2024

They elucidate the applicability of tax rates, treatment of capital gains, and the implications of frequent trading on taxation under different heads of income.

CRYPTOCURRENCY, AND ITS MARKET CAPITALIZATION

Indeed, cryptocurrencies have already become a significant part of financial transactions, hence also an integral part of our economy, which is unavoidable in its true essence.⁷ It has become a necessary endeavor because of its independent and decentralized operations without interference from any governmental bodies as such. Before going into the taxability regime, the author briefly discusses the operation and market capitalization of Cryptocurrency. This discussion will help in diving deep into the complexities portion of cryptocurrencies.

Cryptocurrency is a kind of virtual money which is based on cryptographic security system, and also it is not regulated by any centralized or apex authority. The FATF has broadly described “digital representation of value that can be traded digitally and functions as (i) a medium of exchange; (ii) a unit of account; and/or (iii) a store of value, but not having a legal tender status in any jurisdiction.”⁸ Transactions including money, property, intangible assets are part of this cryptocurrency.

After the basic contextual knowledge of how transactions related to cryptocurrency occur over block-chain technology, it is relevant to examine how the idea and operations of cryptocurrencies have been evolved globally. The developer of the most well-known and first of all cryptocurrency, Bitcoin, was an individual or group of individuals, from 2008 to 2009, under the alias Satoshi Nakamoto⁹. Subsequent to this, the cryptocurrency market has realized a steady expansion in terms of its magnitude and methodology.

⁷ Jonathan Chiu, Thorsten Koepl, ‘The Economics of Cryptocurrencies Bitcoin and Beyond’ (2019), Bank of Canada Staff Working Paper, <<https://doi.org/10.34989/swp-2019-40>> accessed 23 August 2024

⁸ Financial Action Task Force, ‘Virtual Currencies Key Definitions and Potential AML/CFT Risks’ (June 2014) <<https://www.fatf-gafi.org/media/fatf/documents/reports/Virtual-currency-keydefinitions-and-potential-aml-cft-risks.pdf>> accessed 23 August 2024

⁹ Satoshi Nakamoto, ‘Bitcoin: A Peer-to-Peer Electronic Cash System; About Bitcoin.org’ (Bitcoin.org) <<https://bitcoin.org/en/about-us>> accessed on 23 August 2024

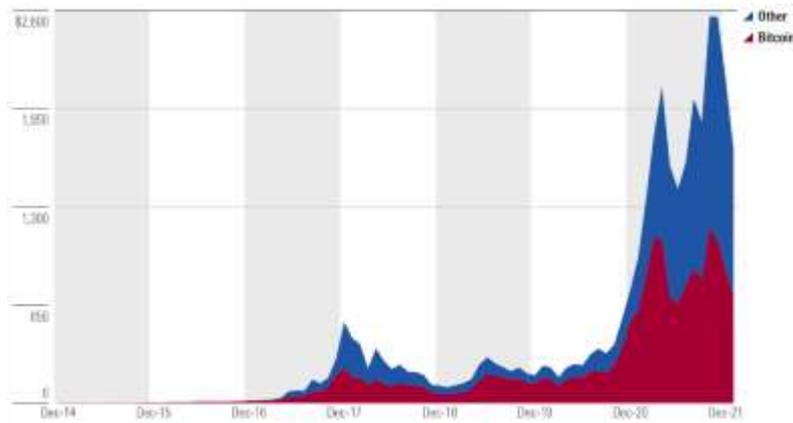


Fig. 1: Market Capitalization of Cryptocurrency Market¹⁰

CRYPTO TAXATION TREAT UNDER THE DIRECT/INCOME TAX

Before the introduction of the bill, Crypto was mainly taxed under two heads i.e. *Business Income and Capital Gains*. When the crypto user is a trader, his income or profits from the cryptocurrency are taxed under the head of Business Income. When a person is using the crypto market for regular purchase and sale of the currencies and the proportion of selling & purchasing is almost equal amount, then he would be considered as a trader. In the same line, if a person's purchases are more than that of the sales, which is also not in a frequent manner, then he can be considered as an Investor. The income or profits of an investor from the transactions of cryptocurrencies used to be taxed as Income from Capital Gains. Let's analyse this in detail

A. *Crypto taxation under income from business and profession*

Under the Income Tax Act, there are provisions for income of business or profession carried on by the assessee. The definition of the term *business* includes – “any trade, commerce or manufacture or any adventure or concern like trade, commerce or manufacture.”¹¹ The income will be calculated, as we calculate income from business in ordinary cases. As per the rules, first of all, we need to find out the taxable income of the business. This can be calculated in two ways. Firstly, as per the Normal Provision, in which the taxable income is calculated by deducting the cost of sold goods and expenses from the total sales. Secondly, as per the presumptive taxation method, the taxable income will be the fixed percentage of the total sales

¹⁰ Madeline Hume, '5 Charts on Crypto's Past, Present, and Future' (Morningstar, 7 April 2022) <<https://www.morningstar.co.uk/uk/news/220381/5-charts-on-cryptos-past-present-and-future.aspx>> accessed 23 August 2024

¹¹ The Income Tax Act 1961, s 2(13)

made out of the business. As per the rules applicable in India, the presumptive taxation scheme is solely available for businesses with a turnover of more than Rupees Two Crores.¹² In the next instance, we have to check regarding the income tax slab under which the assessment is falling. It has three types like for people under 60 years, seniors between 60 to 80 years, and super seniors above 80 years.

Old Tax Slabs		New Tax Slabs	
Up to Rs 2.5 lac	Nil	Up to Rs 2.5 lac	Nil
Rs 2.5 - 5 lac	5%	Rs 2.5 - 5 lac	5%
Rs 5 - 10 lac	20%	Rs 5 - 7.5 lac	10%
Rs 10 lac & above	30%	Rs 7.5 - 10 lac	15%
-	-	Rs 10 - 12.5 lac	20%
-	-	Rs 12.5 - 15 lac	25%
-	-	Rs 15 lac & above	30%

Fig. 2 – Income Tax Slab (For an assessee Below 60 years)¹³

When cryptocurrencies are held for commercial reasons, the tax treatment of them as "stock in trade" is quite simple because there are no complexities related to classifying them as capital gains. Under Section 2(13) of the ITA, the definition of 'business' is inclusive in nature, and comprises of "trade, commerce or manufacture or any adventure or concern of such nature."

This definition unquestionably includes any continuing cryptocurrency trading activity, with any profits made being subject to Section 28 of the Income Tax Act. Even if these profits are realised "in kind" rather than in cash, they are nevertheless taxable. In addition, any costs paid for this purpose—for example, purchasing computer power as a capital asset—should be deducted under the guidelines provided in Income Tax Act Sections 30 to 43D.

Under income tax regulations, mining bitcoins is generally viewed as a taxable event, and the fair market value of the bitcoins that are mined is treated as taxable income. The value of income at the time of mining is, nevertheless, somewhat ambiguous. Furthermore, as will be

¹² 'Business Income Tax – How Income Tax is Calculated on Business Income?' (ABC of Taxes, ADITYA BIRLA CAPITAL) <<https://www.adityabirlacapital.com/abc-of-money/check-out-how-is-income-tax-calculated-on-your-business>> accessed 23 August 2024

¹³ Dev Ashish, 'Latest Income Tax Slabs FY2022-23 AY2023-24 (Budget 2022)' (Stable Investor, 1 February 2021) <<https://stableinvestor.com/2021/02/income-tax-slabs-fy-2021-22.html>> accessed 23 August 2024

covered later in this paper, adhering to disclosure obligations can be quite difficult. Whether bitcoins are legal or unlawful in India is a matter for the government to decide, but it has no bearing on how much they can be taxed. Actually, there is no distinction made by income tax law between legitimate and illicit income.

B. Crypto as capital gains

To tax the income arising from cryptocurrencies under the head Capital gains, we have to first bring it under the gambit of income arising from capital assets.¹⁴ *Capital Asset* as per the definition under the Income Tax Act is “any kind of property held by the assessee whether tangible or intangible”¹⁵. As per this, cryptocurrency can be very well brought under the gambit of capital Gain. The second criteria are the capital asset must have been transferred¹⁶. The definition of transfer includes “sale, exchange or relinquishment too”. After this, the capital gain is calculated taking the ‘Cost of Acquisition/Indexed Cost of Acquisition, Cost of Improvement/Indexed Cost of Improvement, and the transfer expenditure.’ After taking into consideration, whether the transfer of asset is long-term¹⁷ or short-term¹⁸, is duly calculated thereafter.

The Income Tax Act's Section 2(14) describes a capital asset as "property of any kind held by the assessee, whether or not connected with their business or profession." Personal effects, or movable items that are closely associated with the individual, are not included in this. All forms of property are included in the broad definition of "capital asset," with the exception of those that are expressly excluded under the Act. Therefore, if the bitcoins were held as an investment, any gains from the transfer should be recognised as capital gains. When transferring cryptocurrency, the asset would be considered a long-term capital asset and the gains would be subject to taxation at the rates listed for long-term capital gains (or "LTCGs") under the Internal Tax Code (ITA) if the holding period exceeded thirty-six months.

¹⁴ The Income Tax Act 1961, s 45

¹⁵ The Income Tax Act 1961, s 2(14)

¹⁶ The Income Tax Act 1961, s 2(47)

¹⁷ The Income Tax Act 1961, s 2(29A) and s112

¹⁸ The Income Tax Act 1961, s 2(42A)

CRYPTO-CURRENCY, THE BILL, AND INCOME TAX ACT

Before introducing the new finance bill of 2022¹⁹, by Finance Minister Nirmala Sitaraman, the cryptocurrencies were taxed as per the above-discussed provisions of the Income Tax Act. As per the proposals in the finance bill, Section 115 BBH²⁰ is inserted in the Income Tax Act, which made the crypto-currencies exclusively taxable in India as Virtual Digital Assets. It is taxable at a rate of thirty % along with a four % cess. This represents a significant departure from earlier procedures and attempts to offer a uniform and transparent framework for taxing digital assets.

By deducting a certain percentage at the source of each transaction, Tax Deducted at Source (TDS) seeks to tax cryptocurrency traders and investors as and when they complete a transaction. The TDS amount must be deducted by the buyer and sent to the central government if the buyer owes the seller money. The vendor will only be paid the remaining sum. The TDS rate for cryptocurrency in India is One %. The buyer will be in charge of subtracting TDS at the one % rate when paying the seller for the transfer of Crypto/NFT as of July 1st, 2022. If the transaction is conducted on an exchange, the exchange has the option to withhold the TDS and give the seller the remaining amount. Individuals dealing on international exchanges need to manually deduct TDS and file their TDS returns, whereas Indian markets automatically deduct TDS. TDS under Section 194S is only applicable at the time of purchasing VDA from an Indian Tax Resident, which is a crucial point to keep in mind. Therefore, one may argue that Section 194S²¹ is not relevant if they trade on an international exchange, DEX, and deal with non-residents or non-resident entities. In all other situations, tax would be calculated using the short-term capital gains (or "STCGs") provisions. The market value of the bitcoins at the time of creation or purchase would serve as the acquisition cost in this scenario, and any profit from a sale price that exceeds the acquisition cost would be subject to taxation under Section 45 of the ITA.

ISSUES AND CHALLENGES

After getting a brief understanding of crypto-currency and its tax treatment, now the author will dive into the most preminent chapter of this research paper. This chapter will thoroughly delve into the discussion of different circumstances in the present time, which are standing

¹⁹ The Finance Bill, (2022) [18], c III cl 3(b)

²⁰ The Income Tax Act of 1961

²¹ The Income Tax Act of 1961

as an obstruction to the proper, just, and reasonable tax imposition on cryptocurrencies. The discussion of the issues and challenges may greatly help the legislators, policy-makers, and researchers to reframe the provisions to strike down the issues and challenges, and to make some amendments to get rid of the hindrances.

A. *Cost of Acquisition*

The Section 115BBH in the ITA, it talks about tax on income from VDAs. Under this section, it is highlighted that only the Cost of Acquisition is allowed to be deducted while calculating income from the Virtual Digital Assets, not any other expenditure. The Cost of Acquisition can be realized if the investors or traders are transacting in the market of Crypto-currency, but there is a challenge when it comes to the case of “Crypto Mining”. Crypto mining means “It is a process in which the miners while verifying new transactions in the crypto world generate new coins”²². Now let’s examine the challenge of COA for miners. Currently, miners do not have any Cost of Acquisition, as it is discussed that they acquire these coins as a reward while mining them. They don’t have any monetary or capital expenditure to acquire the coins directly, but we cannot ignore the indirect capital outflow in generating these coins. The indirect expenditure includes the expense of acquiring the systems to generate the coins, the cooling cost of the equipment, the cost of electricity, the cost of heating, etc. As these expenses are considered incidental to their type, it is not allowed to be taken as a deduction as per the provisions of Section 115BBH²³. So the taxable income in this case will be without taking any expenditure for the cost of acquisition. So as a consequence, there may be a chance that the whole mining industry will be wiped out from India completely as the miners will sustain loss in their mining business without any deduction of high-cost expenditure.

Since bitcoin is a ‘self-generated asset’ generated by the system as a reward for verifying the transactions, the cost of acquisition (‘COA’) is technically unascertainable as the only input the miner employs is the computer capacity under the system. In the case of Commissioner of Income-tax v. B.C. Srinivasa Shetty²⁴, the Supreme Court held that where the COA is ‘indeterminable’, no capital gains would be chargeable on such costs. Under such a circumstance, there may be a possibility that the gain from sale of such bitcoins is exempt from

²² Euny Hong, ‘How does Bitcoin Ming Work?’ (Investopedia, 18 April 2024)
<<https://www.investopedia.com/tech/how-does-bitcoin-mining-work/>> accessed 23 August 2024

²³ The Finance Bill, (2022) [18], c III cl 28(1)

²⁴ [1981] 2 SCC 460

tax.²⁵ The ratio of that case was as follows –

“The mode of computation and deductions set forth in section 48 provide the principal basis for quantifying the income chargeable under the head "Capital gains". What is contemplated under section 48 is an asset in the acquisition of which it is possible to envisage a cost. [...] None of the provisions pertaining to the head "Capital gains" suggests that they include an asset in the acquisition of which no cost at all can be conceived. Yet there are assets which are acquired by way of production in which no cost element can be identified or envisaged. [...] A transaction to which those provisions cannot be applied must be regarded as never intended by section 45 to be the subject of the charge.”

B. Set off of losses

As per the provisions of the bill, if the assessee is sustaining any loss in a particular previous year due to the transactions relating to cryptocurrencies, it will not be allowed to be set off against any other inter-head income of the taxpaying assessee. While incurring losses in crypto won't obligate the person to pay tax on that, the same can't be carried forward in subsequent years. The words used under the provision of 115BBH(2)(b) is- “no set off of loss from the transfer of the virtual digital asset computed under clause (a) of sub-section (1) shall be allowed against income computed under any other provision of this Act to the assessee...” In this regard, a clear provision must be added, so the taxpayers can benefit from it whether the loss of crypto can be adjusted with the profits made from the crypto.

Illustration – Mr. Kapoor bought Rs.1,00,000/- worth of Ethereum, which he sold for 1,50,000/-. Additionally, he bought Rs. 50,000/- worth Bitcoin, which he sold for 30,000/-. The cost of transfer was of Rs. 1,000/-.

Currency	Cost Price (in Rs.)		Selling Price (in Rs.)	Net Profit or Loss	Rate of Tax	Amount Taxable
Ethereum	1,00,000/-		1,50,000/-	50,000/- (Profit)	30%	15,000/-
Bitcoin	50,000/-		30,000/-	20,000/- (Loss)	30%	-

²⁵ R. Dalmia v. CIT [1982] 133 ITR 169 (Delhi)

Total Taxable Amount						15,000/-
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In this instance, the loss of 20,000/- will not be allowed to be set off against the gains of Rs. 50,000/-. Also the expense of Rs. 1,000/- incurred as a trading fee (transfer expenditure is not allowed as a deduction).

C. Tax Deduction at Source (TDS)

Section 194S of the Income Tax Act, states about deduction by the payer, on the transfer of VDA, from the payee, which is the TDS²⁶. The TDS provisions have been added to the Income Tax Act to keep a check upon the taxpayers on avoiding the tax, i.e. Tax Evasion. So, it is the responsibility of the payer, who is paying the amount, to deduct the tax at the rate specified in the provisions, from the payee. The payer is further responsible for depositing the amount with the government.²⁷ In the case of cryptocurrency, the responsibility to deduct the TDS amount is with the individual who is paying the consideration to the other person. So as this is a generalised provision²⁸, it is posing a responsibility on every general citizen or entity to deduct TDS. It would have been easier and more convenient if the responsibility of this deduction was imposed upon the Indian exchanges while framing the clauses in the Finance Bill. Another challenge occurs the investments, transactions, and trading are done through foreign exchanges. The issue that is pertaining is whether these foreign exchanges could also deduct the TDS and deposit the reduced amount with the government of India. And whether the government of India can exercise legal jurisdiction over these entities. The third issue that is pertaining is, if in a scenario the parties in transactions are unknown to each other, and it has been made anonymously. All these above-discussed scenarios have been moulded with a lot of misinterpretations and confusion in themselves. So an immediate resolution to these issues is needed.

D. Higher Tax rate, rather than slab rates

There are various concerns with the choice to impose a flat 30% tax on cryptocurrency

²⁶ The Finance Bill, (2022) [18], c III cl 59

²⁷ Income Tax Department, TDS ON SALARIES, <https://www.incometaxindia.gov.in/booklets%20%20pamphlets/tds-on-salaries.pdf>.

²⁸ The Finance Bill, (2022) [18], c III cl 59

transactions as opposed to a slab rate structure. The government may think people with strong financial stability make up the majority of the crypto market participants, which would mean that the tax will have little effect on the general public. On the other hand, given the decentralized structure and significant risk of cryptocurrency investments, the high tax rate may be an attempt to discourage such investments. This taxation strategy implies that the government is hesitant to fully open the cryptocurrency market. As has been discussed for years, the authorities chose to tax Virtual Digital Assets (VDAs) rather than enact complete laws. While individuals in the highest income tax bracket may not be greatly impacted, industry expert Ajeet Khurana notes that others in lower or zero tax levels will bear the brunt, moving straight to a 30% rate. This decision may be interpreted as a safeguard for novice traders and investors, deterring them from participating in cryptocurrency deals while the market is still being researched. It seems that the government is proceeding cautiously, giving tax collection precedence over any rapid regulatory changes about this asset class.

E. Location of the parties to the transaction is unknown

The parties' locations are unclear in these kinds of transactions. As was previously mentioned, because the identities and whereabouts of the parties engaged in bitcoin transactions are concealed, they cannot be monitored. This could lead to inquiries on the proper GST rate, relevant legislation, and whether the transaction was intrastate or interstate. The purpose of the proposed legislation is to better comprehend the identity of the parties involved in transactions by identifying and regulating them. When a cryptocurrency transfer happens through a trading platform, the exchange might verify the participants' identities prior to finalising the transaction, which could potentially help with the GST realisation process. Individual transactions, however, provide a different kind of difficulty. How can users in this system obtain in the identities of buyers and sellers, and how will the government control it?

G. Initial coin offerings

This is a method used to raise capital for the introduction of a new cryptocurrency, app, or service in the market of the cryptocurrency sector. Interested investors can purchase new currency or tokens produced by the company through a procedure similar to that of Initial Public Offerings (IPO) which is known as Initial Coin Offerings (ICO). As per the data and reports, approximately hundred number of crypto-currency start-ups have been launched in the last year and the number will be increasing in the upcoming years. So in this case the issue is that will GST be applicable in the process of issuing these ICOs? In this approach, the business

typically offers to give coins or another digital asset in the future in exchange for money. The investors then utilise the tokens to obtain the coins once the business launches. So, Initial Coin offering has not been a fully pledged concept yet and is mostly a mere concept, due to which GST should not apply here as no transaction is happening at the issuance of ICOs.

RECOMMENDATION AND WAY FORWARD:

- The study's recommendations for future tax policy emphasize the need for adaptive, flexible, and harmonized tax frameworks that can accommodate the evolving nature of cryptocurrencies. Simplified tax reporting for small-scale transactions and international collaboration in developing standardized tax regulations are crucial for effective tax enforcement and prevention of tax evasion.
- Cryptocurrency classification and tax ramifications are largely dependent on its nature. Accurate tax treatment depends on knowing the elements that determine whether owning a unit of bitcoin is a capital asset or stock-in-trade under different circumstances.
- Several parties are involved in the bitcoin ecosystem at every stage of its lifetime, from the beginning to the end, which might result in a number of taxable events. It is crucial to create a framework that takes into account the specifics of each transaction, even while it might not be possible to identify and apply a comprehensive tax system to every entity engaged at this time. For this reason, the government needs to make it clear which transactions will be liable to taxes and how they will be collected. For instance, the official IRS website in the US offers a thorough set of frequently asked questions about transactions using virtual currencies, which aids in the understanding of the tax ramifications of various taxable events by both tax authorities and taxpayers.
- The volatility of cryptocurrencies and their potential effects on the environment are worries for policymakers, particularly as the ecosystem is still developing. Instead of levying a high tax on all transfers, the government ought to carry out a comprehensive risk-benefit analysis of different use cases and take into account imposing certain tax rates on particular transactions. For instance, to safeguard investors and encourage the expansion of the sector, long-term cryptocurrency investments might be subject to a reduced tax rate.
- Since cryptocurrencies can be kept in a variety of wallet formats, it is almost hard to pinpoint their precise location. Wallet providers give users access to software and other

tools for managing, transferring, and storing virtual money. They may provide custodial services that keep cryptocurrency offline (cold storage) or online (hot storage) in addition to managing customers' private keys to facilitate transactions. Users can save their private keys in non-custodial wallets, which can be either hardware-based cold wallets or software-based hot wallets. For effective taxes, there must be clear regulations on the location of cryptocurrencies. The situs of a cryptocurrency in India might not be determined by its location or mode of storage, but rather by the user's tax residency.

- It is necessary for the government to make clear the financial consequences of mining and staking cryptocurrency if it decides to classify them as a separate asset class under a new tax regime. This is because the taxability of cryptocurrencies is still unclear because of the uncertainty around the phrase "transfer." Additionally, dealers may run into issues tracking sellers' identities or tax status due to the new framework's withholding duties. To resolve these concerns, a thorough evaluation of these responsibilities is required. It is imperative to combine efforts to increase knowledge among authorities and taxpayers with the tax framework as interest in cryptocurrencies develops. To help taxpayers comprehend possible tax ramifications and to make sure tax inspectors are ready to monitor and track virtual transactions, the government should set up training sessions and awareness campaigns.

CONCLUSION

The use of cryptocurrency is now getting widespread among investors as more investors opt for virtual digital asset transactions. The implementation of levying tax on cryptocurrency has been a great move by the government although there is still a long way to go in addressing the need for a robust framework and regulatory body for the same. The legal and tax landscape surrounding cryptocurrencies is continually evolving as regulators and tax authorities strive to keep pace with technological advancements and market developments. The present legal system reflects a mix of regulatory frameworks aimed at balancing innovation with investor protection and financial stability. Hence, the Indian government ought to consider creating a regulatory organization to oversee the cryptocurrency market to safeguard the interests of the investors and prohibit illicit activity that would bring in more money for the state. Investors are vulnerable to preventable scams in the absence of a legal framework, and new businesses attempting to enter this sector face uncertainty.

ENDNOTES

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