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TAXING STATUTES AGAINST THE GROWING GIANT- CRYPTO CURRENCY, AN CRITICAL ANALYSIS

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ABSTRACT

Tax is major source of revenue to the government and in return the people of the country get benefits and service of the country. But today this process has been hindered by a technological development called crypto currencies. The lack of legal definitions, the understanding of the concept of this crypto currency, the delayal in implementation of regulations from 2006 till 2022 even now in 2024, though the direct taxation on crypto currencies is implemented by government from 2022, still there is huge lacunae in indirect taxes in addition to the direct tax, which is resulting in great economical loss to the government and less effective financial management over this subject matter. This paper deals about the growth of crypto currencies, its current legislations, the lacunae present and suggestions for development of legal position with regards to taxation for better management.

Keywords: Economy, crypto currencies, virtual digital assets, Indirect tax, direct tax.

INTRODUCTION

The modern world is flourishing with rapid technological growth. Concepts like Artificial Intelligence (A.I), blockchain and crypto currencies are making life and law, sophisticated and complicated respectively. The world no more considers bigger is better, it is the faster which is better. The one which adopts fast, develops fast is now winning the world. Hence technology is growing faster than progressive development of laws. The technological growth of the world is so rapid that gaming money which were laundered in games started to affect the real-world economy, a technology which drew its history from 1960's (i.e., crypto currency), a sci-fi concept of movies became reality (i.e., Artificial Intelligence), by the time these concepts where starting impact the real-world economy, India did not even have a separate legislation for domain names of internet. The concept of crypto currency made an important breakthrough in the year of 2009, till 2022 there were no single legislative definition in the eye of Indian laws, which by itself made Indian populace to become one of the largest users of crypto currency through which many transactions went unsupervised, that is transactions which could have been made taxable where left unwatched for a decade. Now the steps have been taken to monitor and regulate such transaction through Finance Act, 2022. Whether this suffice the regulation and monitoring of the crypto assets and further expanding technologies? Is there any chance these existing legislations due to its incomplete form will ever either affect an unaware citizen of technology or will it be used by misusers of law to earn money more? These are extensively analyzed in this paper by limiting itself to law of taxation and its practical application, by discussing what were the laws that existed before 2022, what is the current law, its substantive and procedural issues. Finally, a suggestion to mitigate, prevent and bring harmony between law and technology.

POSITION OF CRYPTO CURRENCY BEFORE 2022

By the time the first crypto currency which is BITCOIN was made, the value of 1 coin was Rs. 2 approximately, now after a decade and so the value sways in lakhs, the development of value in such high range is caused by various reasons such as decentralization of transactions, the speed, the convenience, the technology of block chain which made it nearly not hackable, yet another hidden motive once it started to grow in value is the fact that it has been become unnoticed by the eyes of law. There were huge lacunae in law, normal conventional laws were used by courts to interpretate the issues of crypto currency if went to court, which was rare at that point, only few cases reached the steps of court that too when it started to be an issue in regulating banks procedures. It was not taxed in separate, it was decentralized completely, there were even coins that's called as privacy coins that made information as to how much coins a person holds in his crypto wallets unknown to others except the owner. All these factors made the technology an easy and comfortable one for the ones who wanted make most gains without paying taxes. Even if there were any complaints in regards to money laundering under this regards mostly was solved by settlement to protect the reputation of respective private crypto coins. From being a global transaction currency, many corporates started to mine new private currencies which were even regularized and developed with offers, stages, discounts, these companies even started to follow the concept of crypto eco system, whereby browsers, social communication software, virtual private network (VPN) and even sale of properties were made. This made the crypto currency market value approximately 4.06 Billion in USD dollars by 2021 with India being one of the leading countries to invest on crypto. To sum it up, one of the fastest growing industry went unnoticed in the radar for taxing for a decade, where only overseen by the courts, when disputes knocked it door steps, that too was decided with existing old laws and principle of natural justice. Notable steps were taken mostly after 2017 in regards to this technology that to by recognizing the efficiency of the blockchain system and its advantages, they are as follows: -

- The Security Exchange Board of India, introduced a Distributed Ledger Technology based on blockchain.
- Indian Computer Emergency Response Team (CERTin) has generally defined and tasked to respond to the issues which are complained to them in regards with Virtual Digital Assets (hereafter referred as VDA), WEB 3.0, Blockchain.
- The project of Central Bank Digital Currency was started by RBI.
- By spreading awareness about not to fall into crypto scam, which in impact terms was not successful, as the aim should have been awareness towards how the technology functions, rather than telling not to do something. New technologies have always been objected first, but inevitably becomes acceptable in its limited versions.

But these were not sufficient and fast enough to manage the issue in entirety.

POSITION OF CRYPTO CURRENCY AFTER 2022 UNDER TAXATION

Slowly we can see that India which were recommending people not to invest in cryptocurrencies make changes in view, that only if crypto currencies were banned globally can it completely bring control towards its standpoint, which will be near to impossible at this period of development of crypto currencies. And hence India started to change its approach towards regulation of crypto currencies. In 2018, RBI prohibited to engaging with entities dealing with cryptocurrency. However, this ban was struck down by the Supreme Court in the Internet and mobile Association of India Vs. RBI, where the court held that the ban was a disproportionate measure which could be replaced with regulatory measures moreover RBI as unenforceable. Thus, after this case, India started to implement its notion notably through law of taxation. In India, power to collect taxes was discussed under Article 246 of the Constitution of India, which provides power to parliament and state legislature impose and make laws accordingly for the matters listed in the seventh schedule.

As then taxing laws relating to cryptocurrency were uncertain, in 2022, the Finance Act imposed tax on cryptocurrency under Section 115BBH. The term 'Virtual Digital Assets' has been inserted and defined through the Finance Act 2022, which means 'any information, code, number or token generated through cryptographic means and it can be transferred or stored electronically and also includes non-fungible token. The tax was introduced at flat rate of 30% on income from the transfer of any virtual digital assets and tax deducted at 1%. Furthermore, no set off will be allowed in case of losses, hence an investor cannot deduct the losses, also VDA's received in the way of gift would be taxed in the hands of the recipient.

Taxes in general can be classified into two types, such as direct tax and indirect tax. In terms of direct Tax there are 5 major heads. Now to clarify, under which head of income this will be made taxable, cryptocurrency is taxable under both income from capital gain and Income from Profit and Gain of Business or Profession. Reference has been made to case laws to analyze the category under which head cryptocurrencies falls under:

In *Ahmed GH Ariff Vs. CWT*, the court held that the term 'Property' has a wide connotation it includes both tangible and intangible assets. It connotes every possible interest which a person can hold and enjoy. Therefore, cryptocurrency can be classified as a capital asset. If the investment in cryptocurrency is held for more than 36 months, it would be classified as a long-term capital asset or if the period of holding is less than 36 months, it would be considered as a short-term capital asset. Whether the gain is the short term or long term the tax shall be paid by the individual who has earned any profit on cryptocurrency transaction. Moreover, an equalization levy of 2% may also be levied on cryptocurrency purchased from foreign exchange. In many countries they have categorized the cryptocurrency as property and taxable as capital gain.

Now that it is clear that these crypto currencies are a capital gain, in order to tax such capital assets, firstly, we must determine the cost of Acquisition, for example: if the bitcoins have been mined, the Cost of Acquisition cannot be determined, which makes the capital gains indeterminable. In *CIT Vs. BC Srinivasa Setty,* the court held that if the cost of acquisition is indeterminable, no capital gains would be taxed. Furthermore, determining the fair market value of the cryptocurrency at the time of exchange or sale would be very difficult due to the extreme price fluctuations. So, it is difficult to say that such gain would be exempt from tax.

Hence it was suggested to make a reference to the valuation officer under Section 55A of the Income tax Act to ascertain the fair market value at the time of creation of cryptocurrency which would constitute the cost of acquisition of the capital asset. Hence assesses gained money through cryptocurrency is taxable under the Head Income from capital Gain. Also, business or investors engaged in trading of cryptocurrency professionally would be included under Profit and Gains of Business or Profession. Hence, crypto traders chargeable to tax under the head income from Profit and Gains of Business or Profession. Apart from income from capital gain and Profit and Gains of Business or Profession if the person who receive the crypto as a form of gift cards or crypto tokens are considered as movable assets. Therefore, the receiver has to pay tax under the head income from other source as per the normal taxes. Also, the one who stakes a crypto for its benefits comes under this head.

In terms of Indirect taxes in India, the Goods and Services Tax on Crypto currency is a contentious issue. The term goods include movable properties, actionable claims, crops or anything attached to the land but excluded money and securities. Since, Virtual digital Assets as it is, cannot be categorized as money or securities and The Central Board of Indirect Taxes and Customs has issued a clarity of the same that cryptocurrency is not to be considered as currency but as good or service. Therefore, any transaction involves exchange of crypto will attract GST. Moreover, if a business person mines or sells cryptocurrencies as part of a trade, they are required to register for Goods and services Tax and pay tax on the earned income. For example, if a person purchases the cryptocurrency for investment is generally not taxable under GST. If a person uses the cryptocurrency to made a payment for goods or services, the transaction may be taxable. If the effective implementation will avoid the disputes between the tax authorities with the traders and investors.

The above said analysis gives an understanding as to what is the extent and scope the current legislations which is applicable to crypto currencies with existing case laws in regards to concepts of taxing heads for reference.

CURRENT LEGAL ISSUES ON CRYPTOCURRENCY AND ITS IMPACT

Now that the current laws and its stand is discussed in detail, it’s time to dive into still existing issue in cryptocurrencies and laws. The Finance Act 2022, imposed tax on cryptocurrency, but there is a big question as to whether the goods and services tax are applies to cryptocurrency transactions? Because the 2022 finance Act, does not provide the principle behind taxing of cryptocurrency, the finance minister of India said ‘we are only taxing the profit made on these assets since a large number of crypto assets are being bought and sold, the government of India is yet to recognise crypto currency which by itself gives us an impression that the stand of the government is not clear or not covering all the sides of crypto currency and after two years in the current G20 meet, the finance minister said there is a need for immediate attention to crypto assets from G20 nations, stressing that the response must ensure potential benefits are not lost while safeguarding economies from harm. Both these dialects reconfirm the change of view of the government from opposing crypto currencies to understanding the importance of this industry and to avoid any misuse. But whether there is development of laws in this regard so that everything can run in a smooth manner. The answer is No. Currently there is no legislation particularly dealing with this crypto currency, also there is no authority in particular dealing with crypto transaction on the side of the government, which board can protect the scams that are happening through this medium, CERTin as it is, cannot be sole authority, it deals with general cybercrimes, the scope of the cyber world itself has been expanded exponentially. So far, the term "Digital asset" was not defined in the Goods and Services Tax Act. The classification of cryptocurrencies under Goods and Services tax is not straightforward as they not determine any predefined category. There is lack of clarity a precise and complete provision regarding crypto currencies can lead to avoidance of disputes between the tax authorities with the traders and investors.

Crypto currency has expanded the boundaries of money laundering and corruption. The current legislation majorly deals only about transactions that are happening through banking, but it is very much possible to transfer crypto currencies and get cash for the same, also the legislations in this regard takes account majorly the BITCOIN, but there are many ALTERNATIVE coins, with less monetary value but with higher popularity and business policies, which majorly goes unnoticed, this paves way to money laundering through the use of the blockchain technology. Another notable cases like known people of who are having crypto currencies kidnapping the owner of the account to make a transfer of accounts, and having no ways to retrieve it, is also an issue though it does not affect directly the law of taxation it has its own implied impacts.

CONCLUSION

Cryptocurrency is one of the growing industries in the world. Though the finance Act, 2022 initiated taxing to the cryptocurrencies, on the other hand it is not controlled by any central authority but by private corporates and stake holders, then by the users who are investing and doing business through particular blockchain software. At the same time, money laundering through cryptocurrency is more complicated because it is technically advanced and decentralized. It is hard to be trace as it works under decentralized system and even if one country bans it, since it internationally accessible one can sell within minutes anywhere it is recognised. Furthermore, it can be easily converted into any other cryptocurrency and its value fluctuate drastically within hours. All these actions are not recorded by any central authority. Hence it is suggested firstly to bring awareness to common people about the nature of crypto currency. We humans generally tend to walk the easiest way available. Crypto industries is one such industry where it looks so easy in its outlook but gets more complicated when looked carefully. Secondly, the well-versed technological minds are very advanced to avoid an basic provisions of our current legal structure, they can easily avoid taxation, easy fraud people with little intellect over such technology. In order avoid this, the country need to accept the inevitable and unanimously with world form a general law, yes that might take some time, here comes our third issue of that clarity over the blockchain and crypto currencies industry. The government need to exhaust all the available scopes for the usage of these technologies and form an authority to over see any issues arising out of it, a vigilante legislation of its own, a separate chapter both in Income tax Act and Goods and Service Act, solely dedicated towards this technology, and make connections with all the Hubs that are making transactions to be accountable as to how much transactions has been made a day in a country though it is not possible to disclose the information of private party, it can tally the transactions made and tax paid by the HUB, if any tally is missing, the particular Hub should be made accountable to pay tax. These are all just an initial suggestion, the industry is growing in rapid phase, the law must grow faster than the industry to catch up.

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2. See Section 115BBH of Income Tax Act, 1961.
3. See Section 2(13) of Income Tax Act, 1961.
4. See Section 2(52) of the Central Goods and Services Tax Act, 2017.