



LEGALITY OF CRYPTOCURRENCY IN INDIA: WAY FORWARD

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ABSTRACT

Cryptocurrencies have long garnered attention of the financial world, revolutionized the commercial world to a large extent by providing virtual digital assets which can be used as something of value in digital ecosystem through "cryptocurrency wallets"¹ like Exodus, Coinbase wallet, Atomic, etc. In modern economy due to advancement of technology these currencies are gaining popularity among the consumers. Some countries have acted swiftly to regulate it in order to reap maximum benefit of this new product, while some countries like India is still observing it and not accepting it full-fledged. The finance bill 2022 added section 115BBH to Income Tax Act, 1961 which made income from transactions in virtual digital assets taxable at 30% (plus surcharge and educational cess) without any deduction except for the cost of acquisition. With effect from 1st April 2022 Income Tax department has already prescribed the form regarding it. A column has been added in ITR 2 to be filled with details like date of acquisition, date of transfer, cost of acquisition, profits or losses from such asset etc. As per these observations it can be deduced that Indian government is working dynamically to frame a robust regulatory framework which is incumbent. Cryptos are ready to resume their propensity to outperform most traditional assets.

In the article various facets of the cryptocurrency that should be considered and understood, keeping in mind the Indian legal framework will be researched and discussed.

KEYWORDS: cryptocurrency, cryptocurrency wallets, regulations, income tax act 1996, ITR 2

INTRODUCTION

We are living and working at a formidable point in history, one in which the changing nature of money and the ideas for currency affect people and communities in profound and very complex ways. Cryptocurrencies have been subjected to the spotlight of the decade and have been grabbing the attention of the tax authorities essentially due to the high prices at which they were seen trading on exchanges in India and across the globe and the regulatory mechanism of taxation has to be determined looking at the current legal landscape. Crypto taxation platforms will offer a cost-effective solution by offering the tools needed to convert transactions and provide accurate details in a shorter time frame. These tools integrate with cryptocurrency exchanges, making reporting and bookkeeping easier. They include features such as document preparation, net profit and loss calculations, and real-time preview of tax bills, all of that help to streamline the overall tax filing process. It optimises the process by providing a single dashboard for managing multiple clients. It enables CAs to access transaction data and exchange statements without the need during separate login credentials.

The Constitution of India under Article 246 grants the power to levy taxes to the Parliament as well as the state legislatures to impose taxes.² Article 265 provides that no tax can be imposed or collected without the authority of law.³ With the introduction of the Constitution (One Hundred and First Amendment) Act, 2016, the Parliament made several amendments concerning the imposition of Goods and Services Tax ('GST') including Article 246A, wherein exclusive power was given to the Parliament to make laws about interstate trade and commerce.⁴ Furthermore, Schedule VII lists the subject matters where Parliament and state legislatures can impose taxes.⁵

In India, cryptocurrencies are unregulated, but a new section 115BBH was introduced in Budget 2022. According to the Income Tax Act of India, any income earned through cryptocurrency trading is considered capital gains and

² Art. 246, The Constitution Of India, 1950.

³ Art. 265, The Constitution Of India, 1950.

⁴ Art. 246A, The Constitution Of India, 1950.

⁵ Schedule VII, List I, Union List, Items 82-92B; Schedule VII, List II, State List, Items 46-62.



is taxed. Section 115BBH imposes a 30% tax (plus applicable surcharge and 4% cess) on cryptocurrency trading profits (beginning April 1, 2022). Moreover, 1% TDS on Crypto transactions was introduced under Section 194S and is applicable to all crypto transactions completed on or after July 1, 2022.⁶ Form No.26Q is to be furnished for quarterly statements of VDA transactions executed on peer to peer basis and Form No.26QE is to be furnished for quarterly statement of VDA transactions executed by the specified person.⁷

For example, if an INR 100,000 investment in Crypto was made at the start of FY 2022 and the crypto was sold for INR 1,50,000 by the end of FY 2022, a flat 30% tax is applicable on the gain of INR 50,000 surcharge and cess additional.

Bitcoin is one example of a convertible virtual currency. Bitcoin is a cryptocurrency, a form of payment that uses cryptography to control its creation and management, rather than relying on central authorities⁸. Unlike usual forms of currency, it is in virtual form and may be used to transact in physical as well as online transactions. Essentially, bitcoin is a snippet of codes based on algorithm first identified in a self-authored paper by Satoshi Nakamoto.⁹ The creation and transfer of bitcoins is based on open source cryptographic protocol managed in a decentralized manner. Bitcoin network shares a public ledger called the “block chain”.

Accordingly, any transaction involving cryptocurrency can be analysed from two viewpoints - income and expenditure. The nature of the transaction nature and parties to the transaction would decide if it may be taxable under the Income Tax Act, 1961, or Central Goods and Services Tax Act, 2017, and other laws. According to a report by the National Association of Software and Services Companies (Nasscom), the industry is expected to be worth \$241 million by 2030. Bitcoin, Smart Contracts, Decentralised Finance, Tokenization, Non-Fungible Tokens, CryptoTech Capital, and Central Bank Digital Currencies are some of the key trends driving the growth of crypto-tech in India.

Cryptomarkets is on the rise due to the news of Bitcoin halving and launch of ETF in the year 2024 as in the month of April the trading volumes have skyrocketed. Bitcoin values have reached to a historical limits of \$70481 with the daily trading volumes of \$116,707,585,485.¹⁰

Currency

The RBI Act does not specifically define currency, but it does define foreign currency to have the same meaning as in Foreign Exchange Regulation Act, 1973, which has since been replaced by FEMA.

Cash has been characterized under FEMA to incorporate, 'all money notes, postal notes, postal orders, cash orders, checks, drafts, explorers checks, letters of credit, bills of trade and promissory notes, Visas or such other comparable instruments, as might be told by the Reserve Bank'. FEMA defines 'foreign currency' as any currency other than Indian currency.¹¹ Definition of 'Indian Currency' under FEMA states that Indian currency is the currency which is expressed or drawn in Indian Rupees.

Virtual Currency

The question at hand is whether a 'virtual currency' such as Bitcoin can be said to come under the purview of the definition of currency above. The answer to this question can be found in the maxim 'expressum facit cessare tacitum'. The maxim represents the principle 'when there is express mention of certain things, then anything not mentioned is excluded'. The maxim has been recognized by Indian courts and was also relied upon by the Supreme Court in *Shankara Rao Badam & Ors. v. State of Mysore & Anr.*¹². Considering the provisions of the law, it can

⁶ "26558243.pdf." <https://cag.gov.in/74-2022-062fdffb116f944>, MINISTRY OF FINANCE, 20 June 2022, cag.gov.in/uploads/media/notification-no-74-2022-062fdffb116f944-26558243.pdf. Accessed 20 June 2022.

⁷ Biswas, Sujaini. "How to Download and Fill Form 26Q and Form 26QE for TDS on Crypto Transactions?" *Cleartax*, 28 Apr. 2023, cleartax.in/s/how-to-download-and-fill-form-26q-and-form-26qe.

⁸ Brito, J., Shadab, H. B., & Castillo, A. (2014). *Bitcoin Financial Regulation: Securities, Derivatives, Prediction Markets, & Gambling*. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2423461>

⁹ Wright, Craig. "Bitcoin: A Peer-to-Peer Electronic Cash System." *Social Science Research Network*, 1 Jan. 2008, <https://doi.org/10.2139/ssrn.3440802>.

¹⁰ *Cryptocurrency Prices, Charts, and Crypto Market Cap* | CoinGecko. (n.d.). CoinGecko. <https://www.coingecko.com/>

¹¹ Section 2(q), Foreign Exchange Management Act 1999.

¹² *Shankara Rao Badam & Ors. v. State of Mysore & Anr.*, [1985] AIR SC 1416.



be reasonably concluded that ‘virtual currency’ should be considered excluded from the definition of currency. While it may be argued that it may fall under ‘such other similar instruments’ under Section 2(h), but such ‘other instruments’ need to be specifically notified by the RBI which is not the case. There is no such declaration in respect of crypto currencies in general or Bitcoin in particular. RBI has merely advised the public to be cautious regarding the trading of virtual currencies.¹³ Therefore, under the provisions of existing law, Bitcoin are not currency.¹⁴

Taxation of Bitcoin

Being a relatively unregulated form of currency, there is not much jurisprudence available which discusses the ability of the citizens in India to transact through bitcoins¹⁵. Broadly speaking, any transaction involving bitcoins could be analysed from two viewpoints – income and expenditure.¹⁶ Depending upon the nature and parties to the transaction, it may be taxable under the Income Tax Act, 1961 (‘ITA’) (in case of income), or Central Goods and Services Tax Act, 2017 (‘Act’) and other laws (in case of expenditure).

While taxing the assets the following kinds of transactions are not addressed:

1. Blockchain hard fork,
2. Receiving an airdrop,
3. Donating crypto assets, including to some charities or political parties,
4. Initial coin offerings,
5. Loss or theft of the asset.

When taxation is on income, it may be on Bitcoin representing such income or on Bitcoin representing asset value. Additionally, it may also be on expenditure – cost of acquiring Bitcoin, such as Central Sales Tax, Value Added Tax or Service Tax. Treatment of bitcoins as goods/property would mean that supply of bitcoins is a ‘taxable supply’ and hence subject to GST. However, a supply of bitcoins as goods or property in exchange of other virtual/real goods should technically fall within the ambit of ‘barter transaction’ since bartering is simply an exchange of one good for other goods.¹⁷ After the implementation of GST, tax under the Act is levied on supply of goods or services or both,¹⁸ and ‘supply’ includes barter made or agreed to be made for a consideration in the course or furtherance of business.¹⁹ Hence, there is no ambiguity that barter transactions will not be tax-free under GST. Three conditions may arise in such a scenario:

- i. Transactions involving exchange of cryptocurrencies,
- ii. Transactions involving exchange of cryptocurrencies for goods and services, and
- iii. Transactions involving exchange of cryptocurrencies for goods and services through intermediary.

Cryptocurrency

Cryptocurrency is a binary information designed to work as a medium of trade in which person coin ownership data are saved in a ledger current in a shape of automated database using robust cryptography to steady transaction facts, to govern the advent of extra coins and to affirm the switch of coin ownership.

The cryptocurrency was launched for maintaining a product / currency ecosystem based primarily on blockchain technology with a decentralized infrastructure, as opposed to a traditional currency ecosystem in all jurisdictions around the world controlled and monitored by a set of infrastructure by each Central Bank.²⁰

Given the complexity of cryptocurrency, it is difficult to arrive at a complete definition, but it can be understood through the definition given by the FATF (Financial Action Task Force). The FATF defines virtual currency as a digital representation of value, which can be used for digital transactions and can be used as a medium of exchange; and / or a unit of account and / or a store of value, but does not have the status of legal tender.

¹³ Tata Consultancy Services v State of Andhra Pradesh, 271 ITR 401 [2004]

¹⁴ Section 2, The Sale of Goods Act 1930.

¹⁵ Team, Taxscan. “FUTURE OF CRYPTOCURRENCIES IN INDIA.” Taxscan | Simplifying Tax Laws, 28 Dec. 2020, www.taxscan.in/future-of-cryptocurrencies-in-india/60666.

¹⁶ Anthony Volastro, CNBC Explains: How to Mine Bitcoins on your Own, January 23, 2024.

¹⁷ Pawan K. Aggarwal. (2010, December 8). *Who Pays the Tax?: A Study of Incidence of Indirect Taxes in India*. Gayatri Publications. p. 14-16.

¹⁸ The Central Goods and Services Tax Act, 2017, Sec. 9(1).

¹⁹ Id. Sec. 7(1)(a).

²⁰ Kumar, Arnab, et al. “Blockchain: The India Strategy.” www.niti.gov.in, Niti ayog, Jan.

2020, www.niti.gov.in/sites/default/files/2020-01/Blockchain_The_India_Strategy_Part_I.pdf. Accessed 10 Apr. 2024.



According to a Survey Report conducted by the Library of Congress in 130 jurisdictions around the world, it is found that the management and regulation of VC (virtual currency) as legal tender or currency differs in each jurisdiction in the world. Measures taken by most countries include issuing public warnings to citizens about the volatility and unregulated nature of cryptocurrencies. According to the survey, some countries have chosen to restrict or ban Cryptocurrency trading, while some countries have developed their own Cryptocurrency systems. Prior to this decision, the Reserve Bank of India decided to effectively restrict domestic cryptocurrency transactions.

Challenges and Issues

The type of digital currency isn't without some monetary and security issues. The primary issues and effects of digital money are:

1. Security Dangers

Programmers and migrant clients can make the virtual money they need on the off chance that they obliterate the framework and know the technique to make virtual cash. This will bring about the capacity to make counterfeit virtual money or take virtual cash by changing the record balance.

2. Harms

The limitless emanation of virtual cash in the virtual local area assortment prompts monetary issues since its issuance did not depend on request and supply. A supplier, like the subsequent life, gives a limitless string and can expand the cost of the virtual thing to acquire an all the more genuine pay. Then again, there is expansion and financial issues that lead to fall with a virtual cash framework.

3. Hazard in Gold Cultivating

Gold cultivating is extremely famous in China and other emerging nations. Gold ranchers are players playing on friendly games like World of Warcraft, to get gold in the virtual money of the game. The objective purchaser is a player who doesn't have the opportunity to play and clashes to get a virtual money. Indeed, a gigantic progression of money is created from the cultivating system, which isn't controlled and directed. This will build the misrepresentation and monetary dangers traded with genuine cash in a solid climate.

4. Illegal Tax Avoidance

Illegal tax avoidance is a danger, which is probably going to increment with the utilization of VC, particularly on stages that permit clients to trade genuine monetary forms for virtual monetary standards. For a situation study in South Korea in 2008, the police captured 14 individuals who acquired \$38 million in illegal tax avoidance through the offer of virtual money. The gathering will change over the 38 million U.S. dollars produced by establishing gold from South Korea to a paper organization in China as buy instalment.

5. Risks of Mishandling

There is an immediate need to make a protocol for handling the assets in place. The owners of any virtual assets must bear the risks associated with the asset, and these encompass, but are not limited to, the following:

- a) Incomplete transaction (with unforeseen liabilities) ;
- b) Underlying pegged valuation (for example, in a rug pull scenario);
- c) Market volatility (for example, by the time the asset is liquidated, it may be worthless).

The owner has to keep the 16-digit hash key with them while accessing it ,failing which can lose the cryptocurrency with no way to retrieve it.

Black market for cryptographic forms of money:

Some friendly games, for example, Second Life and WoW are monetarily full grown to the point of making an underground market for trading virtual monetary forms. The expanding prevalence of virtual monetary standards in the internet based climate has prompted the prospering of the underground market where virtual monetary forms are exchanged with genuine monetary standards. By taking a gander at different social gaming gatherings, a few instances of extortion among clients have been raised and talked about. For instance, when a player chooses to leave the game, they might need to sell the virtual money they own by giving it in the game discussion. The instalment strategy is unsafe in light of the fact that numerous vindictive clients will most likely be unable to finish the instalment or have debates later instalment. For this situation, they will get their cash and virtual money back.

India, being a most populous country of the world, has encountered a monetary rise as of late; The country's development rate has arrived where the IMF positioned it as the quickest developing arising economy. The number of inhabitants in the nation approaches media communications and Internet administrations. A nation loaded with insider facts, history and culture; It is additionally not something that lingers behind with regards to specialized



advancement. Bitcoin and other Cryptocurrencies have been working in the country for quite a long while at this point.

Back in 2012, little bitcoin exchanges were occurring in the country. These were the beginning of Bitcoin's development, when just digital currency fans were keen on Bitcoin. By 2013, Bitcoin started to acquire far and wide prominence in numerous nations . Around the same time, various organizations started tolerating installments in Bitcoin. Kolonial, an open pizza in the Worli locale of Mumbai was the first eatery administration in Quite a while to acknowledge Bitcoin installments. Presently, digital currency trades started to show up in the country. Btcx India, Unocoin and Coinsecure have begun offering digital currency trade and exchanging administrations India; Over time, others have been added to the rundown, like Zebpay, Koinex, and BitcoinIndia. In India, it has declined from a humble level in 2013 to its present level.

On November 8, 2016, Prime Minister Narendra Modi reported the beginning of a de-adaptation strategy. The public authority's choice to get rid of around 86% of the country's banknotes has sent shockwaves across the Indian subcontinent. It implies keeping up with this abundance without critical taxation rates and shifted government controls. Certain individuals regularly purchase enormous orders for bitcoins or other digital forms of money and afterward sell them later. Colossal expenses assuming they attempt to move their fortune through the financial framework. The demonetization strategy has likewise drawn inescapable analysis from the country's predominant monetary specialists, with 86% of the country's banknotes available for use deteriorating inside 24 hours, as indicated by the public authority. Not actually "genuine" cash, since it isn't supported by anything, the Indians started to search for elective money models. Numerous Indians, particularly those in the 40% with Internet access, have begun putting resources into bitcoins and other digital currencies.

The 2016 demonetization inclusion may likewise have prodded the reception of cryptographic forms of money among a huge piece of the general population anyway real factors immediately headed out to arise which have smothered the blast of the commercial centre with inside the country. Notwithstanding its broad people, India handiest contributes 2 level of the full overall digital money commercial centre capitalization. The little position being performed through any such immense financial framework might be credited to the inordinate digital money costs and the RBI-drove specialists' crackdown. The notable level of costs of digital forms of money in India is at the inordinate side. Market costs are extremely better through as parcels as five to ten rate when contrasted with the overall normal. This technique that Indians can handiest get stressed in fringe cooperation in crypto trading as far as worldwide crypto change frameworks are concerned.

Way Forward

The absence of huge scope mining undertakings and severe government limitations on global incomes likewise make it a lot harder for Indians to manage a considerable lot of the major unfamiliar digital currency trades. Albeit the country's administration didn't boycott digital currencies, it didn't uphold them. The coming years will show in which course the digital currency market will move; the amount India take worry on it.

The questionable roundabout contains two writ petitions: the main claim was recorded by different digital money trades (Rajdeep Singh and Ors v. Association of India) on April 17, 2018; The subsequent request was recorded by IMAI (Internet and Mobile Communications Association of India), an association that goes about as a self-administrative body for OTT content suppliers.

Starting around 2013, RBI has given brochures and advanced examination on the benefits and detriments of virtual cash. Openly gave plans distinguish the related dangers and unpredictability of cryptographic forms of money for any individual or substance associated with such a funding exchange. This series of activities taken by RBI somewhere in the range of 2013 and 2018 shows that they have been chipping away at this issue for just about five years and can't be viewed as at legitimate fault for negligence. The court decided that RBI was not needed to compose digests or decisions while staying happy with the plan, as a few stages have been assumed control in the course of recent years.

This judgment is a seriously required transient measure to facilitate the situation of Cryptocurrency trades in the nation as they resume. think about the advantages of the dissemination of Cryptocurrencies in the economy, just as a decision not guaranteeing that RBI has no position to manage these Cryptocurrencies.



The capacity commercial center of Cryptocurrency in India is undisputedly remarkable with colossal ability. As indicated by the 2017 glance at through PHD Chamber of Commerce and Industry, the blended trading volumes of all crypto-trades might be in Rs. 200-250 crore steady with month and that's just the beginning or less Rs. 1200-1500 crores all around certainly worth of Bitcoins are exchanged India. We can see the growth of around 10% in the cryptocurrency markets of India was at approx.. one hundred fifty crores in 2018. The current global cryptocurrency market cap today is \$2.81 Trillion, a 3.51% change in the last 24 hours and 127.07% change one year ago. As of today, the market cap of Bitcoin (BTC) is at \$1.4 Trillion, representing a Bitcoin dominance of 49.81%. Meanwhile, Stablecoins' market cap is at \$155 Billion and has a 5.54% share of the total crypto market cap. The total number of coins are 13731 with total number of exchanges of 1049 working in this field.²¹

CONCLUSION

The banks and diverse financial foundations may be mindful so as to have association with inside the other of Cryptocurrency in light of the fact that the strategy and outlook of RBI and specialists toward Cryptocurrencies has now at this point not been ideal, and there might be no guarantee regarding whether or not such practically identical guidelines as forced by means of the suppressed round will presently don't really be forced. India is basically slacking in taking on and selling the Blockchain innovation and Cryptocurrencies, and the long-term time frame impact of the judgment at the Cryptocurrency commercial centre will rely upon what ways the legislators and controllers pick. Until a proper legislation is framed in India Chapter IV F –Income from other sources and Chapter IV D- Profit and gains of business or profession will be followed to calculate and impose tax on the income received from taxation from cryptocurrencies the industry will not grow at the expected pace. In order to see an adoption happening in the blockchain space and different enterprises putting big investments a robust regulatory framework is required. India being a fastest emerging country in the web3 development and provider standpoint has a long way to go in terms of adoption and user base. The market gurus are of a bullish view on the success stories in web3 world in next 10 years to come. As per a study by NASSCOM India is growing fast talent pool at a rate of 120percent. But due to lack of clarity in regulations the start-ups are registering outside India and functioning in India.²²

²¹“Cryptocurrency Prices in Indian Rupee (INR) | CoinGecko.” CoinGecko, www.coingecko.com/en/currencies/inr.

²² Tripathi, Naandika. “India Can Lead the Web3 Revolution, but Lack of Regulations Can Be a Business-killer.” *Forbes India*, 20 May 2023, www.forbesindia.com/article/take-one-big-story-of-the-day/india-can-lead-the-web3-revolution-but-lack-of-regulations-can-be-a-businesskiller/84997/1.