International Journal for Multidisciplinary Research (IJFMR)

E-ISSN: 2582-2160 ● Website: www.ijfmr.com ● Email: editor@ijfmr.com

Review of Literature on Taxabilitiy of Cryptocurrency

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ABSTRACT:

Virtual Currency, Digital Currency, Crypto Asset, DLT(Distributed Ledger Technology) , Payment tokens, Virtual Asset, Bitcoin are some of the terms commonly used to denote the crypto currency without any standard common definition. These are all types of crypto assets developed initially in 2009. Bitcoin, Ethereum are some of the widely used crypto currencies. All around the world some countries have regularised this field, some are yet to regularise. The entire event is based on the concept of decentralisation or no need of a Central organ to control or monitor such currencies. Let us look at the various articles published with different ideas regarding the taxability of such cryptocurrencies.

Keywords: Cryptocurrency, tax levied, virtual currency, crypto assets.

REVIEW OF LITERATURE

In the article titled "Cryptocurrency In India: Empowered In 2020", the authors namely Bhavnish Kaur Chhabda and Vasanthi Hariharan have analysed how other countries responded to the increase in cryptocurrency in their country's business. The authors in their work suggest that regulation of cryptocurrency in India may boost Indian economy. They also request for a correct legal approach towards cryptocurrency for the better development of the country. The authors suggest that only depending upon the nature of transaction, a tax can be levied, so we have to classify it first, before levying a tax. Depending upon the classification it can be decided whether it can be taxed under the direct tax regime like (Income tax) or Indirect tax regime like (Goods and Services Tax). The authors also point out that other countries in the world have classified cryptocurrency as either good or currency . In India, if cryptocurrency are classified as currency means no tax can be levied as money is neither is a good nor an income. The authors suggest that possibility of taxing cryptocurrency would be two ways, either as profit under the head Profits and gains of Business profession or under the head called Capital gains. In their conclusion the authors have explored the possibility of double taxation of crypto currencies.[1]

In the article titled "Taxing Virtual Currencies – An Overview of Tax Treatments and Emerging Tax Policy Issues" by OECD Centre For Tax Policy and Administration, broadly discuss about the growth of the crypto assets. They also quote 2015 BEPS(Base Erosion and Profit Shifting) and 2018 guidelines which cite need to monitor closely the tax evasion that may arise due to the cryptocurrency generation. They have discussed in detail about the place where crypto-assets are to be taxed, whether in the country in which it is situated(i.e. to be included in country's net wealth taxes) or based on capital gains taxation.

[1] (2021) 7(2) NLUJ L Rev 246

They have also discussed about the possibility of taxing them within the existing legal framework. They suggest tax transparency particularly in the areas of the crypto-assets. They analyse that inspite of fluctuation in terms of value, the crypto currencies flourish with the help of illegal trade or crime based activities. The focus of the paper is on the Payment token –which can be used in the same manner as the ordinary legal currency. They suggest that different classification of crypto assets in different countries may lead to different tax liability, and explain how European Union's 5th Anti money laundering directive has regulated virtual assets in the European countries. They point out how different countries classify crypto assets as foreign fiat currency or representation in digital form or financial instruments for the taxation purpose. They found that purpose of virtual currency determines the tax consequence of it in a particular country and in most countries creation or distribution of cryptocurrency is taxable rather than storage of it for example in Australia, the type of tax is different when the mining is done for business purpose. They came to a conclusion that the countries in the world do tax a cryptocurrency based on numerous factors like status of the owner, nature of transaction, whether it is for business purpose etc. The relation between VAT (Value Added Tax) and virtual crypto currency is analysed with the result that most countries don't find any relevancy in levying it. They conclude by saying that more attention is needed in the areas of emerging new crypto currencies.[2]

In an article titled "Bitcoin In India: A Deep Down Study" authored by S.Josephine Arulmozhi, K.Pravenkumar and Dr. G.Vinayagaamorthi, traces the history of bitcoin with the exploration of it by a Nakamoto in the year 2009 called as Block0. The Article analyses the various services available across the globe for the transfer of cryptocurrency like Coin Text Service etc. The authors try to explain few actual facts about them.They conclude by saying that coming years will be based on the new technology like bitcoins etc.,[3]

In a article titled "Crypto-currencies Regulatory and Tax Issues" authored by Nishchal Joshipura and Meyappan Nagappan, analyse the scenarios in which the cryptocurrencies can be taxed in future. They successfully differentiate between crypto and utility tokens which are often confused. They explain about the role of participants in the crypto environment like miners, customers, Traders, crypto currency exchanges etc., In particular the article is about 2018 Reserve Bank of India ban on the crypto currency. The authors explain that under sale of goods Act,1930 they cannot be taxed because they are not sold for monetary consideration. They suggest a solution that under Income Tax Act, 1961, it would be feasible to tax it under the category of the capital assets where the cost of Acquisition would be decided based on the expense of setting up of the facilities to mine. Regarding the Non Residents, the authors point out to the loop hole that NRI's are exempted from disclosing about the crypto-assets earned outside India, unless the consideration is remitted to India. The authors also explore the possible way of covering cryptocurrencies under the GST as, definition of good under GST is wide enough to cover it, but the problem is double impact which would be caused.They conclude by saying that by using block chain technology can be

[2] OECD (2020), *Taxing Virtual Currencies: An Overview Of Tax Treatments And Emerging Tax Policy Issues*, OECD, Paris. *www.oecd.org/tax/tax-policy/taxing-virtual-currencies-an-overview-of-tax-treatments-and-emergingtax- policy issues.htm* Accessed on 20.6.2021.

[3] International Journal of Advance and Innovative Research –Volume 6-Issue 2(XXXV); April-June,2019.- https://www.researchgate.net/publication/336603342.

beneficially used to secure a growth in the digital infrastructure.[4]

In an Article titled "Cryptocurrency: An Overview on its impact on Indian Economy" authored by Professor Blesson James and Professor Manjari Parashar , the authors have found the correlation between the cryptocurrency and the Indian Economy. In their study the authors have found out that cause of the government's hesitation to accept such things is the fact that decentralised system , may boost illegal activities like funding for the terrorist activities etc. due to difficulty in tracing such transactions as they are decentralised. The authors go on to analyse the disadvantages of virtual currencies like lack of reliability. The main disadvantage they try to point out is the taxing issues under the existing laws in India. Then the authors try to explain different steps taken so far in India by the RBI and the Government in regulating it, for example the Indian Government itself had declared its interest in exploring the possibility of using Block chain technology for digital economy growth. The authors had acknowledged the role of private companies in crypto currency area by pointing out about the association called Digital Assets and Block Chain Foundation. They conclude by saying that besides ban the tune of investment in this area only increases day by day due to interest among the Indians in dealing with Cryptocurrencies.[5]

In an article titled "Legal status of Cryptocurrency in India: A Critical Review" authored by Dr. Afzalur Rahman, Mohamed Jasim, Dr.Ayub Khan Dawood, analyses cryptocurrency in the light of indian laws like Foreign Exchange Management Act (FEMA) etc., The object of their study is to find out whether crypto currencies fit into the definition of goods or service or whether they should be considered as currency. The authors start their article by explaining the key terms used commonly, and then the process involved like cryptography etc., Then they go on to explain how block chain technology is hacker free. The interesting part in the article is that the authors point out with reference to constitution schedules that Central government already has power to legislate on the subject matter. Then they go on to analyse Coinage Act etc. in relation to definition of legal tender, where the authors point out that RBI Act for the purpose of currency had adopted the definition mentioned in FEMA Act, which classifies any currency other than the Indian Currency as Foreign Currency. They conclude their research by saying that Cryptocurrency is not defined as currency in any of the above mentioned Acts. Their next part of hypothesis is whether it is a good or service , for which they give answer as based on the judicial precedents in India which consider, even a software as a good, these crypto can be classified as goods. They conclude the article by suggesting that buying of such currencies may be allowed under the FEMA Act, but selling of such currencies would not be allowed under the Act. [6]

In an article titled "A study on Opportunities and Challenges of Cryptocurrency in India with special reference to bitcoin" authored by Dr.Anil Kumar V.V & Swathy.P explores how different countries used the opportunity to tax them and legal status of such currencies like Bitcoin in India was analysed in detail. The authors start the article by tracing the evolution of money and they state that even in 1993, there existed the concept of e-cash .Later they say about the different types like folloby ripple, Ethereum and

[4] International Tax Journal April 2018|CTCITJ.I|NO.4(2018).
[5] International Journal of Creative Research Thoughts (IJCRT)|Volume 6, Issue 2 April 2018|ISSN:2320-2882. www.ijcrt.org.
[6] International Journal of Engineering and Technology, 7(4.39)(2018) 960-962: www.sciencepubco.com/index.php/IJET.

Litecoin etc, where they point out the difference between bitcoin and litecoin is that litecoin processes every block once in 2.5 minutes, whereas bitcoin processes every block once in every 10 minutes, thereby litecoin will have a greater speed. They also trace the evolution of type of cryptocurrency called Ethereum. Then they attempt to describe the features of bitcoin in detail like transparency, cost factor, etc. The authors stress the importance of Private key in the working model, by stating that if it is disclosed it will lead to misuse. The article explores what type of tax is levied on cryptocurrencies in European Union. Their main defence was that in India, ban on such currencies was issued only by the bank. The latter part of the article deals with the Advantages of Bitcoin like no restrictions like inflation, global connectivity which increases speed of the transaction etc. They also pinpoint the disadvantages associated with it like irreversibility, negative impact on the real money system, important information once leaked it leads to loss of the currency itself etc. They conclude the article by stating that cryptocurrencies can positively impact e-business and e-payment sector in India.[7]

In an article titled "A study on Cryptocurrency in India-Boon or Bane (with special reference to bitcoin) authored by J.P.Jaideep and K.Rao Prashanth Jyoty, studies the aspect that whether bitcoin usage in India is a advantage or disadvantage., In the beginning they attempt to explain the relationship between the evolution of cryptocurrencies and such need developed by e-commerce transactions etc. Then they describe about the prospect of introducing RBI cryptocurrency called Lakshmi Coin and private players may enter the field through the Jio Coin etc., The authors suggest No taxes like GST or Service Charge is to levied on such transactions, so that it will be more profitful business. The article points out the loophole as amount mined was higher than amount in use , which implies that there is wilful destruction and loss of currencies via different modes. Later in the article they proceed to answer the questions in this area, like whether bitcoin legal or illegal in India, what might happen if a person is in possession of such a thing, etc. The authors suggest that Legalisation of such currencies must be made for India's growth. They conclude by saying that sooner or later the cryptocurrencies otherwise called as virtual currencies will replace the traditional money concept.[8]

In an article titled "Taxing the Block Chain: How Cryptocurrencies Thwart International Tax Policy" authored by Benjamin Molloy the international structure of crypto markets are analysed. The author have discussed in detail about the ban on cryptocurrencies issued by China and United States. The author has expressed his view about the possible revenue the governments could generate by taxing such crypto currencies. The authors try to analyse the policy implications of different countries on the cryptocurrency issue like ban imposed by china etc. The authors suggest that the government authorised or endorsed currencies must be made available in the near future. The authors gave their inputs on the issue of identifying and locating the crypto assets like crypto coins. The authors also point out that there was loss of revenue to Chinese Government only when it banned them, as such transactions continued to happed just out of sight of the Chinese government. The authors have also elaborated their views on the US-China Tax Treaty. They conclude by suggesting to provide preferential tax treatment and standardise the rules governing the user privacy as a measures to avoid tax frauds and to harness the benefits of

[7] International Journal of Research and Analytical Reviews |Volume 6|Issue 1|January-March 2019 –http://ijrar.com/
[8] Journal of Emerging Technologies and Innovative Research(JETIR), February 2019, Volume 6, Issue-2: www.jetir.org.

cryptocurrency.[9]

In a article titled “Hype around Bitcoin: Awareness and Prospective in India” authored by Shika Agarwal and Rakhi Arora, was intended to perceive a understanding about the level of awareness about bitcoin in India. The authors found out through the data collection method that there is no significant difference between male and female individuals in India in receiving or understanding the information related to bitcoins like lesser transaction fees, nil role of third parties like bank etc. The study revealed that salaried class of people are in strong support of government legislation in this field. They also suggest that people must be consulted before bringing any legislation relating to its regulations. Finally they conclude by finding out that neither age nor qualification will make an impact on individual’s dealing of such currencies.[10]

In an article titled “Reinventing Regulation :The curious case of Taxation of Cryptocurrencies in India” authored by Hatim Hussain makes a complete analysis of possibility of taxing them through direct or indirect taxes, etc., Under the chapter taxation the authors pointed out that cryptocurrencies pose the threat of being subject to nil taxation as there is no particular jurisdiction within which it may be subject to tax deduction at source which widens the scope of tax havens. The authors try to explain the concept in both the income and expenditure point of view in two scenarios of treating them as both good and currency. The authors say that treating them as good means, then supply can be covered within the ambit of GST. They point out that exchange of cryptocurrencies can be deemed as supply of goods for consideration and can be subject to tax. They explain that for the case of cryptocurrency given in exchange for the goods and services , the tax can be levied on the reverse charge basis i.e.(recipient pays the tax amount instead of the supplier) with the disadvantage of double taxing. They point out that in respect of indirect taxing of them the issue would be determining the value of the cryptocurrency for tax purposes. Then the authors go on to analyse whether Cryptocurrency mining can be included within the ambit of Service, for which they found out that as there is a service provider, a service recipient, it can be considered as a service. The authors explain that regarding the direct taxes regime, only heads that can be used to charge are Profits and Gains of business profession or under the capital gains head, where in the capital gain it can said that holding cryptocurrencies for a period more than 36-months would amount to Long Term Capital Gains, in any other case it can be treated as Short term Capital gain, with the only difficult that the Supreme Court has held in multiple cases that where no Cost of Acquisition can be determined , it leads to a conclusion that no capital gain taxes can be levied. The authors point out that in case of considering the cryptocurrency as stock in trade taxable under the head of profits and gains of business profession, the profits from such currency trading are taxable as the head is broad enough to cover even the profits not only in the form of money but also in the form of kind. The authors then elaborate upon the tax evasion that could be caused due to the cryptocurrencies, as they lack not only the intermediary control by the bank but also no uniform regulations across the globe. The authors then make a comparison of various regulations imposed in different countries in this field like European Union regulation of it etc. They point out that the inability to tax crypto currencies was not due to lack of statutory backing, but due to inability of the government to identify the taxable event. They conclude the article by stating that cryptocurrency could be a great boon

[9] Oregon review of International law Volume 20, page Number-623 to 648
[10] International Journal of Management, IT & Engineering, Vol.9 Issue 6, June 2019, http://www.ijmra.us

in solving the problems of the unbanked population of India, so they request for measures to stabilise them.[11]

Conclusion:

Thus Collectively from all the articles above, it could be understood that there is a scope of taxing such currencies within the existing laws, provided the taxable event is identified correctly. The problems in taxing them, would be solved if comprehensive statutes covering such areas are passed. As in the future, their use can grow exponentially which may be difficult to impose a blanket ban. Also instead of restricting new technologies, the better option would be to harness the benefit out of it, through taxing methods.

[11] NUJS LAW REVIEW 10NUJS L.REV. page No-792-821(2017).