



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
(SET UP BY AN ACT OF PARLIAMENT)  
**THRISSUR BRANCH (SIRC)**

# Happy Chartered Accountant Day



2024 JULY E-NEWSLETTER

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## INSIDE

03 *Editor's desk*

04 *Chairman's message*

06 *Article*



# EDITOR'S NOTE



Dear Members,

At the outset, I wish everyone a very Happy CA Day. June 2024 was an action-packed month filled with various CPE seminars and activities leading up to CA Day. The celebrations culminated beautifully with a vibrant and eventful July 1st, marking the end of a month-long celebration. I am extremely thankful to all the members who participated in the walkathon, flag hoisting, tree sapling distribution, blood donation, and the family get-together.

It was wonderful to see a hall full of members and their families at the get-together. The main highlights of the event included an interaction with our Chief Guest, Ms. Aparna Balamurali, a renowned South Indian cine artist and National Award winner. The event featured melodious songs, energetic dances, and a live magic show. The participation of students in the dance program added even more color to the event. The icing on the cake was when the majority of the members shed their inhibitions and took to the stage to dance. The event ended with smiles and laughter all around.

I hope we have more such moments in the future, as they help to strengthen the bond within our fraternity, which is directly proportional to our progress as a team. Let us all strive to maintain this camaraderie.

In this month's newsletter, we have an article by CA Mini Chandran on the Virtual Digital Assets Spectrum. Her insightful analysis sheds light on the complexities and opportunities in the evolving digital landscape, making it a must-read for all of us.

I wish you all a very happy reading.

Thank you.

Jai Hind, Jai ICAI.

Warm regards,

CA. Jeen Paul  
Newsletter In Charge



# CHAIRMAN'S MESSAGE

*Dear Professional colleagues,*

Greetings to all of you!



As we transition into July, many of our offices are diligently working towards meeting the upcoming July 31st income tax filing deadlines. Reflecting on the past month, June was truly eventful and filled with a variety of enriching programs and activities. I am delighted to share some highlights and achievements from our branch.

Firstly, we organized numerous CPE seminars that were well-attended and provided valuable insights to our members. One of the standout events was the 15-day Forensic Accounting and Fraud Detection Physical Course, which attracted over 40 participants. This course was a resounding success, thanks to the dedication and expertise of our talented speakers. The Thrissur branch is indeed a treasure trove of skilled professionals, and I encourage more members to come forward and share their knowledge and presentation skills in future events.

In addition to professional development, we also celebrated the 10th International Yoga Day on June 21, 2024. This event featured a rejuvenating yoga session for both members and students, organized in collaboration with the Mayoga (Manappuram Yoga Centre). The session was a great success and highlighted the importance of maintaining physical and mental well-being.

As part of our CA Day celebrations, we conducted a series of engaging and community-focused activities:

## **Members Outdoor Games:**

Held at Thope Stadium, these games fostered camaraderie and team spirit among our members.

## **Members Indoor Games:**

Conducted at our branch premises and Thrissur Sports Centre, these events provided a platform for members to showcase their skills in various indoor sports.

## **Members Football League 2024:**

This event was a highlight, bringing together football enthusiasts for a spirited competition.

## **Green Walkathon:**

Promoting environmental awareness, this walkathon encouraged participants to embrace a greener lifestyle.

## **Distribution of Saplings:**

As part of our green initiative, we distributed saplings to members and the community.

## **Blood Donation Camp:**

In collaboration with IMA, we organized a blood donation camp at our branch, demonstrating our commitment to social responsibility.

**CA Day Charity:**

We distributed bags, books, and umbrellas to LP School students at Koorkenchery, supporting their educational journey.

**Members Family Meet and Get-Together:**

This event provided an opportunity for members and their families to connect and enjoy a pleasant time together.

Our branch also excelled in academic activities. We conducted comprehensive coaching classes for Foundation, Intermediate, and Final examinations. Additionally, we offered integrated courses such as AICITSS – Information Technology, AICITSS – MCS, ICITSS – Information Technology, and ICITSS – Orientation Programme. The quality of education and training at our branch is unmatched, making it the premier destination for CA coaching in Kerala. I earnestly request all members to spread the word about our outstanding academic infrastructure and support aspiring CA students in their journey.

In conclusion, I am immensely proud of the Thrissur branch's accomplishments and the active participation of our members. Let us continue to strive for excellence in all our endeavors and support each other in our professional and personal growth.

Jai ICAI, Jai Hind

**CA. ANOOP V FRANCIS**  
**CHAIRPERSON**

# VIRTUAL DIGITAL ASSETS SPECTRUM



CA. MINI CHANDRAN

*The Union Budget for 2022-23 broadens the definition of "property" to include Virtual Digital Assets. As a result, the gift of a Virtual Digital Asset will be taxable in the hands of the person who has received it.*

*Even though this is a good beginning for the Indian crypto eco-system, certain aspects require clarification from the long-term stability perspective*

## Crypto Currencies--Proportionality Principle

*The principle of proportionality is rarely used by courts. It does not come into picture unless there is a question of violation of fundamental rights by the Executive.*

### 1. Questioning Constitutionality

Any law/section may be questioned on grounds of constitutionality before judiciary. The judiciary in such circumstances examines below points to test grounds of constitutionality -

(a) Whether the law has been drafted within conferred legislative powers its latitude. Legislative is conferred generally with wide powers to pick and choose its topic/genres to legislate. Questioning aspect doctrine on constitutionality is hence carefully handled by courts.

(b) Whether the section is drafted within the four corners of the law to furtherance its purpose/objective. Whether it gives a logical, legitimate reading rather than an absurd one.

(c) Whether the section creates a conflict within provisions of the same law and in such cases, is it possible to give it a positive reading, instead of a negative one, then that positive reading will be attempted else only that part of the law which contrasts to the underlying principle might be held ultra vires.

(d) Whether the section is against fundamental rights available under Constitution of India? The testing for infringement of fundamental rights is far reaching and is often seen in various dimensions.

### 2. Fundamental rights

The fundamental rights under Constitution of India are --

1. Right to equality
2. Right to freedom
3. Right against exploitation

4. Right to freedom of religion

5. Cultural and educational rights

6. Right to constitutional remedies

Right to property was a fundamental right until the Constitutional 44th Amendment, 1978 after which it ceased to be a fundamental right. It remains only as a State conferred legal right as per Article 300A of the Constitution of India.

Some of the fundamental rights are available only to individuals and some to all type of citizens personal or impersonal including corporate entities.

### 3. Powers of writ

Any citizen may question infringement of any fundamental right by invoking writ jurisdiction under Article 226 of the Constitution of India. Writ offers citizenry with judicial remedy against violation of fundamental rights.

### 4. Executive action

The Executive arm of the Government derives its powers from the legislative powers conferred upon it. Within its legislative powers' rules, regulations get issued which fall into the category of subordinate legislation taking the tinge of near law.

When it comes to Executive circulars, guidelines or certain regulatory points outside its conferred legal powers but for furtherance of justice and law; there arises the moot question whether the Executive has lived within the law or has become an outlaw?

The touchstone by courts in such cases is as under -

(a) Whether the Executive issued the instructions, guidelines, circulars or call it by any other name as well against the enactment? If yes, then was there a facility in the law which empowered the Executive to issue it or otherwise?

(b) Do the instructions, guidelines and circulars run obstruct/infringe fundamental rights?

In cases where it is as per (a) above the judiciary simply reviews the law and then declares the action of the Executive to be within or against the law.



## 5. Doctrine of proportionality

In cases where the question of obstruction/infringement of fundamental rights arises, then comes the Principle of Proportionality also known as Doctrine of Proportionality or simply as Proportionality test.

Since we were part of the British colonialism, the left-over ember of the imperial judicial public customary law is what left us also with the law of proportionality.

The test for Proportionality was first enumerated by the Privy Council in the verdict of *Elloy de Freitas v. Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing* (1999) 1 AC 69, later on simply known as De Freitas Test. The De Freitas test being -

- (i) Whether the legislative policy is sufficiently important to justify limiting a fundamental right?
- (ii) Whether the measures designed to meet the legislative objective are rationally connected to it?
- (iii) Whether the means used to impair the right or freedom are no more than is necessary to accomplish the objective.

Simply said, the Executive action is tested for its empowerment, rational application of the law and as to whether the benefit of fettering freedom is necessary and outlives the impairment of the right.

Later on, a fourth test was added by House of Lords in *Huang v. Secretary of State for the Home Department* (2007) UKHL 11 which being -

- (iv) 'The need to balance the interests of society with those of individuals and groups'.

The fourth test became an even more difficult test to put into practice.

## 6. Proportionality principle as per courts

The Supreme Court of United Kingdom later on in *Bank Mellat v. HM Treasury* (No. 2) (2013) UKSC 39 applied these four tests thereafter and that verdict forms the key stone for testing principles of proportionality on Executive action.

'The idea that proportionality is an aspect of justice can be traced back via Aquinas to the Nicomachean Ethics and beyond. The development of the concept in modern times as a standard in public law derives from the Enlightenment, when the relationship between citizens and their rulers came to be considered in a new way, reflected in the concepts of the social contract and of natural rights.

As Blackstone wrote in his *Commentaries on the Laws of England*, 9th (1783), Vol 1, p 125, the concept of civil liberty comprises 'natural liberty so far restrained by human laws (and not farther) as is necessary and expedient for the general advantage of the public'. The idea that the state should limit natural rights only to the minimum extent necessary developed in Germany into a public law standard known as *Verhältnismaigkeit*, or proportionality. From its origins in German administrative law, where it forms the basis of a rigorously structured analysis of the validity of legislative and administrative acts, the concept of proportionality came to be adopted in the case law of the European Court of Justice and the European Court of Human Rights. From the latter, it migrated to Canada, where it has received a particularly careful and influential analysis, and from Canada it spread to a number of other common law jurisdictions.

Proportionality is also part of principles of EU law where it was commented by the EU court --

'The Court has consistently held that the principle of proportionality is one of the general principles of Community law. By virtue of that principle, the lawfulness of the prohibition of an economic activity is subject to the condition that the prohibitory measures are appropriate and necessary in order to achieve the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.

The intensity with which the test is applied--that is to say, the degree of weight or respect given to the assessment of the primary decision-maker--depends upon the context'.

In India the law of proportionality has been rarely applied. In the case of *Modern Dental College and Research Centre v. State of Madhya Pradesh* (2016) 7 SCC 353 the following four principles were once again stressed --

- (i) That the measure is designated for a proper purpose.
- (ii) That the measures are rationally connected to the fulfillment of the purpose.
- (iii) That there are no alternative less invasive measures.
- (iv) That there is a proper relation between the importance of achieving the aim and the importance of limiting the right. The court in the said case held that a mere ritualistic incantation of 'money laundering' or 'black money' does not satisfy the first test and that alternative methods should have been explored.

## 7. RBI circular - Apex Court verdict

It was this Proportionality test which was recently applied by the Apex Court in the case of Internet & Mobile Association of India v. RBI Writ Petition (Civil) Nos. 373 & 528 of 2018 dated 4th March 2020 which is more popularly known as the Crypto currency circular verdict of Supreme Court.

Briefly RBI issued a circular instructing entities involved in the banking sector to not to engage directly or indirectly in Crypto transactions in any form. The moot point was whether this Executive action of RBI was against its legal powers and against fundamental rights more specifically Article 19(1)(g) right to freedom to carry on business or profession. Apex court held that RBI was well within its legal powers to issue a circular. When it came to testing infringement of fundamental rights, they held that the circular of RBI was ultra vires the Constitutional fundamental right Article 19(1)(g) on grounds of proportionality.

The reasoning given by Supreme Court were that RBI had so many alternatives before it which were not considered prior to issuing the said circular. The presence of possible less invasive alternative actions was also not considered by RBI prior to issuing the circular. Accordingly, there was no balance of rights in achieving the aim and the importance of limiting the right (4th principle of proportionality). For the above reasons the circular of RBI was quashed and held to be ultra vires fundamental right under Article 19(1)(g).

There exists a divergent opinion as well, that the Apex court need not have applied proportionality principle while deciding this case. If one reviews the verdict, Apex Court have categorically remarked that the principle of proportionality is already behind Article 19 and more so 19(1)(g). It is entrenched in the Constitution of India as well especially when speaking about violation of fundamental rights. But it is used very rarely. A detailed use of it has however been seen in this decision.

When it comes to legislative action, proportionality test is rarely applied, and it need not be applied either as there need not be equity in law once it is enacted. Where it is quasi legal action, then proportionality principles may be pressed into service on merits.

### *Income Tax--Virtual Digital Assets*

The Finance Act, 2022, inserted a new section, 194S, in the Income Tax (I-T) Act, 1961, with effect from 1 July.

This section mandates the buyer of a virtual digital asset (VDA), to ensure that tax is deducted at source (TDS) at 1% of sale consideration. This simply means, that if P sells Ethereum to Q, then Q will be required to deduct tax from the consideration payable to P, the seller.

But in a practical situation, the transactions for VDA take place through an exchange, that is, a platform or application for transferring of VDAs. In order to remove difficulties for transactions taking place through an exchange, the Central Board of Direct Taxes (CBDT), ministry of finance, GoI has issued circular number 13, dated 22 June and clarified certain situations for deduction of TDS.

Suppose, A sells Bitcoin to K for ₹1 lakh via a platform Z. Suppose, the charges levied by platform Z for this transaction are ₹1,000. In this case, platform Z will be required to deduct TDS on the net consideration after excluding GST/charges/commission. Hence, the TDS deducted by Z will be ₹990 [1% of net consideration of ₹99,000].

There are some situations where the exchange owns the VDA. In this case, the seller is the exchange itself. However, the buyer may be unaware of the fact that the exchange is not operating as a mere platform but also owns the VDA and hence the buyer must deduct TDS from the consideration payable to the exchange. In this case, the exchange may enter into a written agreement with the buyer that in regard to all such transactions, the exchange will be paying the tax on or before the due date for that quarter.

Practically, there are numerous transactions which take place on an exchange where one VDA is exchanged for another. For example, X buys 2 lakh units of crypto currency D from Y for 1 lakh units of crypto currency C. The transaction takes place on exchange Z. In this case, X is buyer for D and seller for C and vice-versa for Y.

When the consideration is in kind, the person responsible for paying such consideration is required to ensure that the tax required to be deducted has been paid in respect of such consideration, before releasing the consideration. Thus, both parties need to pay tax with respect to transfer of VDA and show the evidence to the other so that VDAs can then be exchanged. But since the transaction is through Z, there may be practical difficulties in execution. Hence, tax may be deducted by Z based on written contractual agreement with the buyers/sellers. .



However, since there is no transfer of rupees, how will Z deduct the tax? Hence, Z must deduct 1% from each of the crypto currency, that is, 2,000 units of D will be deducted and the net remittance to Surana shall be 1,98,000 units of D, and 1,000 units of C will be deducted and the net remittance to Y shall be 99,000 units of C. Z should then immediately convert these 2,000 units of D and 1,000 units of C into rupees and deposit the TDS to the Central Government. Now, when C and D are converted to rupees, again Z becomes the seller.

However, since this conversion is for the purpose of depositing the TDS to the Government, this sale by Z will not be subject to TDS.

There has been no clarification provided in the laws regarding the impact of TDS/TCS on global cryptocurrency exchanges. Though it is anticipated that overseas crypto exchanges will not deduct TDS, taxpayers will still be required to pay tax on their crypto gains. If this is not the case, the individual may be prosecuted with tax evasion, which will result in heavy penalties when detected.

In India, more than 100 million people are involved in cryptocurrency exchanges, whereas just 60 million people file their annual income tax forms, according to the government. Now that the finance minister has recognised cryptocurrency exchanges as virtual digital assets and has levied a 30 percent tax on income derived from them, the number of annual returns submitted in India may shoot up very soon.

According to Finance Ministry officials, government will levy goods and services tax (GST) on cryptocurrency transaction fees rather than the digital asset's gross value. The definition of virtual assets in the budget would classify cryptocurrencies or non-fungible tokens as 'intangible goods,' subjecting them to GST.

It is still unclear whether GST will be levied on the margin or the gross value of the virtual asset. As a result, in order to address such anomalies, the government must provide clarification.

## Conclusion

Indian government is beginning to recognize crypto as an emerging asset class, and thereby introduction of Crypto tax was a milestone in Indian income tax laws. 30% taxation will have a negligible impact on trifling crypto investors as tax brackets are already similar to regular taxes on short-term securities holdings.

Next issue on the block would be to untangle the GST levy on the crypto transactions. Several state tax officers are definitely working on this thread to identify the areas for which taxation needs to be clarified. We hope with clarification from government on GST by Budget 2023 would add stability to the overall taxation of crypto in India.

CA. MINI CHANDRAN

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