Loss from one crypto cannot be set off with gain of another: FinMin

Cost of mining will not be treated as a cost of acquisition; crypto players cry foul

Crypto players have urged the Centre to reconsider the decision

SHISHIR SINHA
New Delhi, March 21

Loss from sale of one crypto will not be allowed to be set off against the gain from the sale of another crypto while computing tax, the Finance Ministry clarified in the Lok Sabha on Monday.

It also said that the cost of mining will not be treated as cost of acquisition in the case of virtual digital assets (VDA). The clarifications set off a chain of reactions from crypto players and exchanges anxious that the moves will "cripple" the crypto trade.

While tax experts feel the explanation brings more clarity, crypto players have urged the government to reconsider.

The Finance Bill, 2022 proposes that any income from the transfer of a VDA will be taxed at 30 per cent. Further, while computing the income from such a transfer, no deduction in respect of any expenditure (other than the cost of acquisition) or allowance is allowed.

"As per the proposed provisions of Section 115 BBH to the Income Tax Act, 1961, infrastructure costs incurred in the mining of VDA will not be treated as a cost of acquisition as the same will be in the nature of capital expenditure which is not allowable as deduction as per the provisions of the Act," Minister of State for Finance Pankaj Chaudhary said on Monday, in a written reply to a question raised by Karti Chidambaram.

Chaudhary also clarified that currently cryptocurrencies are unregulated in India.

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> PANKAJ CHAUDHARY
> Minister of State for Finance

Crypto players stunned

Nischal Shetty, CEO of WazirX, feared that treating profits and losses of each market pair separately will discourage crypto participation and throttle the industry's growth. "It's very unfortunate, and we urge the government to reconsider this," he said.

Ashish Singhal, co-founder & CEO of CoinSwitch, also termed the clarifications 'detrimental' for India's crypto industry and for the millions who have invested in this emerging asset class. "We fear the lack of provision to offset losses will drive away users from KYC-compliant exchanges and platforms to the underground peer-to-peer grey market, which would defeat the purpose of the tax," he said.

Further, he said the Budget recognised VDAs as an emerging asset class and a natural course of action would have been to progressively bring the regulations at par with other asset classes. "Instead, we have taken a step backwards," he said.

Double-whammy

Sandeep Jhunjhunwala, partner with Nangia Andersen LLP, felt the clarification lays to rest some doubts that stakeholders of the crypto ecosystem had been grappling with. Since intra-head adjustment of losses is not to be permitted, it would be a sunk cost for the investors, causing a double whammy — paying taxes on gains and no offset of losses.

Rohinton Sidhwa, partner with Deloitte India, termed it a continued effort to isolate and disincentivise crypto currency related activities in India.

Crypto mining costs: No I-T deduction to be allowed, says govt

Loss from transfer of virtual digital asset can't be set off against income from transfer of another

ENS ECONOMIC BUREAU
NEW DELHI, MARCH 21

CLARIFYING TAXATION aspects for cryptocurrencies or virtual digital assets, the government said Monday that infrastructure costs incurred in the mining of cryptocurrencies or any virtual digital assets will not be allowed as deduction under the Income-tax Act.

Also, loss from the transfer of virtual digital asset (VDA) will not be allowed to be set off against the income arising from the transfer of another VDA, Minister of State for Finance Pankaj Chaudhary said in a written reply to the Lok Sabha.

The government will come out with a definition of VDAs with a view to levy 30 per cent tax on income from the transfer of such assets, he said, adding that currently cryptocurrencies are unregulated in the country.

The FY23 Budget has brought in clarity concerning the levy of income tax on crypto assets. From April 1, a 30 per cent income tax plus cess and surcharges, will be levied on such transactions.

"The (Finance) Bill also proposes to define VDA. If any asset falls within the proposed definition, such virtual asset will be considered as VDA for the purposes of the Act and other provisions of the Act will apply accordingly," Chaudhary said.

He added "infrastructure costs incurred in the mining of VDA (e.g. crypto assets) will not be treated as cost of acquisition as the same will be in the nature of capital expenditure", which is not allowable as a deduction under the I-T Act.

Sandeep Jhunjhunwala, partner, Nangia Andersen LLP, said the clarifications provided by the government lays to rest some of the doubts that stakeholders of the crypto ecosystem had been grappling with and more might be required for withholding tax provisions on crypto transactions.

"Since intra-head adjustment of losses, i.e., set-off of loss arising from one VDA with the income from another VDA would not be permitted, such losses would be a sunk cost for the investors, causing a double whammy — paying taxes on gains and no offset of losses.

"This would lead to a situation where losses, say on account of transaction in altcoins (one VDA class) would not be permitted for set-off against gains on another VDA class, say any other programmable token or bitcoin. Similar analogy could be drawn for set-off of losses within the same class of VDA, say ethereum vs dogecoin. Disallowance of infrastructure cost incurred in mining cryptocurrencies costs, as a permissible revenue expenditure, would further increase the cost of mining these assets," he said.

Meanwhile, the government is working on legislation to regulate cryptocurrencies, but no draft has yet been released publicly.