
[2024] 169 taxmann.com 298 (Jodhpur - Trib.)[28-11-2024]

INCOME TAX : Gain on sale of crypto currency held by assessee for more than 3 years was to be taxed under head capital gain and not under head income from other sources



[2024] 169 taxmann.com 298 (Jodhpur - Trib.)

IN THE ITAT JODHPUR BENCH

Raunaq Prakash Jain

v.

Income-tax Officer*

DR. S. SEETHALAKSHMI, JUDICIAL MEMBER
AND RATHOD KAMLESH JAYANTBHAI, ACCOUNTANT MEMBER
IT APPEAL NO. 1 (JODH) OF 2024
[ASSESSMENT YEAR 2021-22]
NOVEMBER 28, 2024

Section 2(14), read with sections 2(47) and 56, of Income-tax Act, 1961 - Capital gains - Capital asset (Virtual digital asset) - Assessment year 2021-22 - Assessee was an individual and salaried person - Assessee purchased Bitcoin (crypto currency) during financial year 2015-16 and sold it during financial year 2020-21 - He invested sale consideration in purchase of property - Assessee filed return declaring long-term capital gain on sale of Bitcoin and also claimed exemption under section 54F - Assessing Officer held that crypto currency was not a capital asset under section 2(14) and made it taxable under section 56 as income from other sources - It was noted that only source of income of assessee was from salary and he had invested his savings in shares/crypto currency - He was not regularly dealing in purchase/sale of shares/ crypto currency - His intention was to hold for long term capital gain which was more evident from fact that assessee held crypto currency for more than 3 years - Further, by Finance Act, 2022 w.e.f. 01.04.2022, section 2(47A) had been inserted thereby Virtual Digital Asset meaning was assigned and that included underlying assets Bitcoins - Whether since crypto currency was specifically incorporated in statute as an asset, it means that even before 1-4-2022, crypto currency was an asset and gain on sale of crypto currency had to be taxed under head capital gain and not under head income from other sources - Held, yes - Whether, accordingly, claim of deduction under section 54F was also to be allowed to assessee - Held, yes [Paras 8 and 9] [In favour of assessee]

FACTS

- The assessee was an individual and salaried person. The assessee purchased Bitcoin (crypto currency) during financial year 2015-16 and sold it during financial year 2020-21. He invested sale consideration in the purchase of property. The assessee filed return declaring long-term capital gain on sale of Bitcoin and also claimed exemption under section 54F. The Assessing Officer held that the crypto currency was not a capital asset under section 2(14) and made it taxable under section 56 as the income from other sources.
- On appeal, the Commissioner (Appeals) had held that Crypto Currency (Bitcoins) was not an asset as per section 2(14), hence, the transfer as per section 2(47) as Long-Term Capital Gain was not applicable in the case of the assessee, and accordingly, he also confirmed the deduction denied under section 54F to the assessee.

- On appeal:

HELD

- The brief facts related to the dispute is that the assessee is a Bachelor of Engineering, had worked with IT company Mind Tree Ltd. as well as Infosys Ltd. While in service in 2015-16 he invested a sum of Rs. 5.05 lakhs out of his regular income. So the source of investment is not in dispute. The regular source of income of assessee is income from salary, income from other source and income from capital gain on sale of shares/ mutual funds. During the year under consideration assessee offered long-term capital gain on sale of bitcoin at Rs. 6.63 crores and after claiming deduction under section 54F of Rs. 4.95 crores, declaring total income of Rs. 1.74 crores for tax purpose. The return of income was filed on 30-12-2021. Thereafter, the case of the assessee was selected for complete scrutiny through 'Computer Assisted Selective Scrutiny (CASS)'. The reason for selection in complete scrutiny was 'capital gains deduction claimed' by issuing notice under section 143(2) on 28-6-2022. Notices were issued from time-to-time and were complied by the assessee. The Assessing Officer in the assessment proceeding noted that the assessee has purchased bitcoin (crypto currency) during financial year 2015-16, amounting to Rs. 5.05 lakhs and sold bitcoin (crypto currency), during the financial year 2020-21, amounting to Rs. 6.69 crores. Against that sale of bitcoin the assessee claimed indexed cost of purchase of bitcoin for Rs. 5.76 lakhs on purchase of bitcoin, taken set-off of losses from shares Rs. 2,331 and claimed exemption under section 54F amounting to Rs. 4.96 crores. The balance amount of Rs. 1.66 crores was considered as long-term capital gain on the sale of bitcoin and accordingly assessee paid taxes at the rate of 20 per cent. As the reasons for selection of the case was deduction claimed by the assessee the Assessing Officer called from the assessee to explain as to how he is eligible for long-term capital gains, as well as for exemption under section 54F, in accordance with the provisions of the Act from the sale of bitcoin (crypto currency) (virtual digital assets) *vide* notice dated 4-11-2022 issued under section 142(1). The assessee contended that their claim is in accordance with the provision of law and filed a detailed reply. The Assessing Officer considered the submission of the assessee, but was not found to be acceptable because the assessee states that he holds bitcoins for more than 3 years and thus claimed the gains on sale as being long-term capital gains. The assessee contended that the bitcoins, (crypto currency) (virtual digital assets) is an asset as per section 2(14), which has been transferred as per provision of section 2(47) and accordingly he has offered the gain arising out of the sale of that asset as long-term capital gains. The Assessing Officer went on to observe that as per the amendment made in the Act effective from financial year 2020-21, the bitcoin is nowhere defined as an asset under section 2(14) and accordingly transfer of capital asset under section 2(47) is not applicable in the assessee's case and accordingly the claim of assessee for considering the bitcoins as an asset under section 2(14) and thereby claim of long-term capital gains was not considered. Based on this contention the assessee was asked to show cause as to why the tax on the net gains of Rs. 6.63 crores on sale of bitcoins be taxed as 'income from other sources' and accordingly his claim for exemption under section 54F was also not to be considered as allowable. In response the assessee filed a detailed reply not agreeing with the variation proposed in the assessment proceeding and relied on the claim and head of income filed in the return of income, based on the detailed replied filed. The assessee in his reply to the aforesaid show cause notice, contended that as per provision of section 2(14) the assessee owns capital asset and there is not exclusion of the property held by the assessee in that section. The assessee also contended that as per section 2(14) point (a), it can be concluded that if any property is not explicitly mentioned in the exclusion list of section 2(14), it should be treated as 'capital asset by default considering it as a property of any kind. The Assessing Officer did not find the submission of the assessee acceptable because a bitcoin does not qualifies to be a 'property', such as to be a capital asset within the terms of section 2(14). Since the Act does not define the term 'property', it must be construed in its plain natural meaning, subject to the context in which that expression occurs and contended that a capital asset is meant to be defined in a wide sense, it yet needs to be a property in the ordinary sense of the word, to then fall within the definition of a capital asset. In its ordinary sense, a property needs to have inherent benefits, which endows it with value. The Assessing Officer also noted that to qualify the property or a real asset class, the assessee needs to demonstrate that it is a stocks or an equity interest in a company and a share in its future earnings, bonds to give a promise from a company to pay a certain amount plus interest, an assets having building/structure or a piece of land or that of gold or a precious metal or commodities having utility and value such as oil, gas, metals etc. All the character of the assets was missing in the assets that the assessee contended. The Assessing Officer also contended that these assets are worth on a given day, but they are real things/property that anyway have value, and independent of

what the market says, they have inherent value at any moments and that is not so with a crypto currency/VDA, where when anyone can buy a crypto or own nothing, except your right to sell your share of nothing to another willing buyer. A crypto, unlike any other property has no independent value or inherent utility and its value is entirely determined by what others will pay or a given day. The Assessing Officer further went on to observe that a crypto currency is not a currency either. It is not a legal tender. It is merely disruptive and uses technology by either block chain technology, when you buy the crypto token. The bitcoin, therefore, does not own an investment in a real asset class or property, such quality to be an asset, within the meaning of section 2(14). With that reasoning and focusing the amendment made *vide* Finance Act, 2022, wherein revenue releasing the fact that there is no specific provision in the Act to tax the profits/gains of the transactions in virtual digital assets (VDAs), and thus provided to tax such income by introducing a new sub-section (47A) in section 2 to define a virtual digital asset and a new section 115BBH to provide for the rate of taxation of gains arising from VDAs, new section 194S for TDS on transactions involving VDAs and the method of computation of such taxable gains simultaneously amending the explanation to section 56(2)(x) and thereby taken a view that the income should be taxed as other income and not as capital gain and consequently the claim of deduction under section 54F was also denied to the assessee. [Para 8]

- When the matter carried before the Commissioner (Appeals) who has held that crypto currency (bitcoins) was not an asset as per section 2(14), hence, the transfer as per section 2(47) as long-term capital gain was not applicable in the case of the appellant and accordingly, he also confirmed the deduction denied under section 54F to the assessee. As regards the contention of the assessee that section 2(14) which defines 'capital asset' as it stood at the time of both the purchase and the sale of crypto currency (bitcoins) does not describe crypto currency (bitcoins) as a capital asset either implicitly or explicitly thereof. The 'virtual digital assets' which contains reference to crypto currencies has only been defined as per section 2(47A) with effect from 1-4-2022 is required to be taxed as incomes falling under residuary status, the same have to be taxed as per section 56. The Commissioner (Appeals) further went on observing that since the section 115BBH inserted by Finance Act, 2022 with effect from 1-4-2023 defines the structure for taxation of such kind of crypto currencies. The intention of the legislature through the section is to allow capital gains in the sale of crypto currencies albeit at a higher rate of 30 per cent without giving the benefit of infrastructure cost while claiming the indexed cost of acquisition and disallowing setting-off losses against any other income and thereby the appeal of the assessee was dismissed. [Para 8]
- Before the Tribunal the assessee effectively taken to ground one that the income be taxed as capital gain and not as other income and if the income be considered as capital gain consequential deduction claimed under section 54F be considered. Plain natural definition of 'property' as is given in the Act property of any kind held by an assessee, whether or not connected with his business or profession; which a person actually owns something of value. Though crypto currency/virtual digital asset is also not a currency but it is not an asset within the meaning of section 2(14). The amendment made in the Finance Act, 2022 has defined virtual digital asset (VDA) under section 2(47A) wherein the name given is of virtual digital assets. Thus, considering the plain vanilla meaning before the amendment as is to be understood at the time of purchase & sale of crypto currency (bitcoins) which is a right of the assessee attached to the investment made. If the definition of capital asset as given in section 2(14) which say that 'property of any kind held by an assessee, whether or not connected with his business or profession.' Explanation 1 to these sections reads that 'property' includes and shall be deemed to have always included any right in or in relation to an Indian company, including right of management or control or any other right whatsoever. Thus, all rights are property and thereby the right of the assessee in bitcoin though a virtual asset is a capital asset. Therefore, the Assessing Officer is incorrect in holding that to qualify as capital asset one should actually own something as property inasmuch as even if a person has a right or claim on a property it is also a capital asset under section 2(14). Further section 2(47) defines transfer in relation to a capital asset to include sale, exchange or relinquishment or extinguishment of any right therein. Therefore, in the instant case the gain on sale of bitcoin which was acquired by the assessee during financial year 2015-16 for Rs. 5.05 lakhs and sold in financial year 2020-21 for Rs. 6.69 crores results into capital gain and not chargeable under the head income from other sources. It is noted that Finance Act, 2022 with effect from 1-4-2022, the section 2(47A) has been inserted thereby the virtual digital asset meaning was assigned and that including the underlying assets bitcoins. Thus, even the law maker has to clarify that virtual digital asset may be a capital asset and that assets to be treated as income to be taxed as special rate. Even otherwise, if the provision of section 45(1) which says, any profit or gain arising from the transfer of capital assets shall be chargeable to tax as capital gains. Since crypto currency is specifically incorporated

in the statute as an asset, it means that even before 1-4-2022 it was an asset and therefore gain on sale of crypto currency has to be taxed under the head capital gain and not under the head income from other sources before the law maker made the specific provision in the Act. Even otherwise, looking to the profile of the assessee it is noted that the only source of income of assessee is from salary and he has invested his savings in shares/crypto currency. He is not regularly dealing in purchase/sale of shares/crypto currency. His intention is to hold for long-term capital gain which is more evident from the fact that he made investment in crypto currency during financial year 2015-16 which was sold in financial year 2020-21 and the gain on sale of crypto currency is invested for purchase of house. This proves that intention of the assessee in making investment in crypto currency is to hold it and to earn long-term capital gain. The revenue has in two cases cited hereinabove has taken a view that the income so earned is taxable under the head capital gain. The same cannot be considered as income from other source merely on the reasons that the assessee by taking that capital gain income also claimed deduction which is otherwise permissible. Thus, even otherwise also when there are two views are possible the view which is favourable to the assessee be considered as held by the Supreme Court in case of CIT Vs. Vegetable Products Ltd. 88 ITR 192 . The similar finding is given by the apex court in the case of Chief Commissioner of CGST Vs. M/s Safari Retreats Pvt. Ltd. Civil Appeal No. 2948 of 2023 order dated 3-10-2024 has held that if two interpretations of a statutory provision are possible, the court ordinarily would interpret the provision in favour of a taxpayer and against the revenue. Therefore also, the gain on sale of crypto currency (bitcoin) prior to assessment year 2022-23 is chargeable to tax as capital gain. [Para 8]

- Next ground raised by the assessee is against the denial of claim of deduction under section 54F on the long-term capital gain declared on sale of crypto currency by taxing such gain under the head income from other sources. As has been held that the income on sale of crypto currency is chargeable to tax under the head long-term capital gain since assessee has hold crypto currency for more than 36 months, therefore, Assessing Officer is directed to allow claim of deduction under section 54F to the assessee. [Para 8]

CASE REVIEW

CIT v. Vegetable Products Ltd. 88 ITR 192 , Chief Commissioner of CGST v. M/s Safari Retreats Pvt. Ltd. Civil Appeal No. 2948 of 2023 order dated 3-10-2024 (Para 8) followed.

P.C. Parwal, FCA for the Appellant. **Rajesh Ojha**, CIT for the Respondent.

ORDER

Rathod Kamlesh Jayantbhai, Accountant Member.- By way of the present appeal, the assessee challenges the order of the National Faceless Appeal Centre [NFAC], Delhi dated 04/12/2023 [for short CIT(A)/NFAC]. The appeal relates to the dispute for assessment year 2021-22. That order under challenges arises because the assessee preferred the first appeal against the assessment order dated 26.12.2022 passed under section 143(3) r.w.s. 144B of the Income Tax Act [for short Act] by National Faceless Assessment Unit [for short AO].

2. The present appeal is because, the assessee feels that ;

"1 . The Ld. CIT(A), NFAC has erred on facts and in law in confirming the action of AO in holding that crypto currency is not a capital asset u/s 2(14) of the IT Act, 1961 in as much as the same is defined by FA, 2022 w.e.f 01.04.2022 u/s 2(47A) of the Act and made taxable u/s 56(2)(x) as income from other sources and thereby taxing gain of Rs. 6,62,96,741/- as income from other sources as against long term capital gain of Rs. 6,62,23,612/-worked out by the assessee and offered for tax.

2. The Ld. CIT(A), NFAC has erred on facts and in law in denying the claim of deduction u/s 54F of Rs. 4,95,68,910/- on the long term capital gain declared on sale of crypto currency by taxing such gain under the head income from other sources.

3. The assessee craves to amend, alter and modify any of the grounds of appeal."

3. Succinctly, the fact as culled out from the records is that the assessee is an individual and salaried person. For the year under consideration apart from the salary income, trading / investment in shares and other income, the assessee also offered the income earned on account of sale of Bitcoin (crypto currency). The assessee filed the return of income on 30.12.2021 declaring total income at Rs. 1,74,39,670/-.

3.1 Subsequent to that the case of the assessee was selected for complete scrutiny through "Computer Assisted Selective Scrutiny (CASS)". The reason for Selection in Complete Scrutiny was "Capital Gains Deduction Claimed" by issuing notice u/s 143(2) of the Act on 28.06.2022. Subsequently, notice u/s 142(1) of the IT Act 1961 was issued on various dates along with detailed questionnaire and the same was duly served upon the assessee through e-proceedings on e-filing portal. In response to the various notice issued from time to time the assessee has furnished various details as called for.

3.2 During the course of assessment proceedings, it is seen that the assessee has purchased Bitcoin (Crypto Currency) during F.Y 2015-16, amounting to Rs. 5,05,155/- and sold Bitcoin (Crypto Currency), during the FY 2020-21, amounting to Rs. 6,69,49,620/-. Against that sale of Bitcoin the assessee claimed indexed cost of purchase of Bitcoin for Rs. 5,75,953/- on purchase of Bitcoin, taken set off of losses from shares Rs. 2,331/- and claimed exemption u/s 54F of the Act amounting to Rs. 4,95,68,910/-. The balance amount of Rs. 1,66,54,702/- was considered as Long Term Capital Gain on the sale of Bitcoin and accordingly assessee paid taxes @ 20%.

3.3 . The Id. AO based on these information asked the assessee to explain as to how he is eligible for long term capital gains, as well as for exemption u/s 54F of the Act, in accordance with the provisions of the Act from the sale of Bitcoin (Crypto Currency) (Virtual Digital Assets) *vide* notice dated 04.11.2022 issued u/s 142(1) of the Act which was replied by the assessee on 08.11.22. The Id. AO considered the submission of the assessee, but was not found to be acceptable for the following reasons:

- (a) The assessee states that he holds Bitcoins for more than 3 years and thus claimed the gains on sale as being long term capital gains. The assessee is thus found to have assumed that the Bitcoins, [Crypto Currency) (Virtual Digital Assets) is an asset as per section 2(14) of the Act, which has been transferred as per section 2(47) of the Act and claimed long term capital gains.
- (b) As per the Act, for FY 2020-21, the Bitcoin is nowhere defined as an asset u/s 2(14) and accordingly transfer of capital asset u/s 2(47) of the Act is not applicable in the assessee's case.

Therefore, the claim of assessee for considering the Bitcoins as an asset u/s 2(14) of the Act and thereby claim of long term capital gains was not considered. Accordingly, a show cause notice dated 15.12.2022 was issued to the assessee, proposing to tax the net gains of Rs. 6,62,96,741/- on sale of Bitcoins as 'Income from other sources' and accordingly his claim for exemption u/s 54F of the Act was not considered as allowable. In response the assessee contended that;

"I would like to clearly and categorically say that I completely disagree with your variation. As in my point of view, I am right in assuming Bitcoin as a 'capital asset and all the other sections including section 54F which are applicable for any capital asset should also be applicable for Bitcoins and gains from sale thereof. I would also like to highlight that as an honest citizen of this country, I have properly and thoroughly declared my gains and income and accordingly filed my taxes and returns promptly, in completeness, with due diligence and as per the applicable laws.

Lastly I would like to request you for personal hearing for pral submission to present my case through video conferencing."

3.4 The assessee in his reply to the aforesaid show cause notice, contends that section 2(14) point (a) clearly states that capital asset is ANY KIND of property held by an assessee, unless specifically specified in exclusions in section 2(14) points (i) through (vi). As per section 2(14) point (a), it can be concluded that if any property is not explicitly mentioned in the exclusion list of section-2(14), it should be treated as 'capital asset by default considering it as a property of any kind. In accordance with the assessee's request for personal hearing for oral submissions through video conferencing, the same was granted on 21.12.2022, at 12.15 PM, wherein the assessee reiterated his submissions, over Video Conference. His oral submissions during the video conference were similar to those furnished *vide* his letter dated 19.12.2022. Finally the Id. AO noted written and oral submissions have been carefully considered, but were not found to be acceptable for reasons discussed hereunder:

- (a) The assessee's primary contention is that section 2(14) point (a) clearly states that a 'capital asset is any kind of property held by an assessee unless specifically specified in exclusions in section 2(14), point (i) through (vi).
- (b) The question therefore is whether a Bitcoin qualifies to be a 'property', such as to be a capital asset

within the terms of section 2(14) of the Act. Since the Act does not define the term 'property', it must be construed in its plain natural meaning, subject to the context in which that expression occurs (ref. to JK Trust v. CIT/EPT, 23 ITR 150, Bom). While a capital asset is meant to be defined in a wide sense, it yet needs to be a property in the ordinary sense of the word, to then fall within the definition of a capital asset. In its ordinary sense, a property needs to have inherent benefits, which endows it with value.

(c) It is trite knowledge, that with property or a real asset class, you actually own something of value eg.

- * Stocks-give an equity Interest in a company and a share in its future earnings.
- * bonds-give a promise from a company to pay a certain amount plus interest.
- * real estate - gives a building/structure or a piece of land.
- * gold-is a precious metal.
- * commodities - have utility and value (such as oil, gas, metals etc.)

While the market determines what these assets are worth on a given day, but they are real things/property that anyway have value, and independent of what the market says, they have inherent value at any moments That is not so with a crypto currency/VDA, where when you buy a crypto you own nothing, except your right to sell your share of nothing to another willing buyer. A crypto, unlike any other property has no independent value or inherent utility and its value is entirely determined by what others will pay on a given day.

(d) A crypto currency is not a currency either. It is not a legal tender. It is merely disruptive and uses technology by either block chain technology, when you buy the crypto token. The Bitcoin, therefore, does not own an investment in a real asset class or property, such as to qualify to be an asset, within the meaning of section 2(14) of the Act.

(e) It is for this reason, that the Finance Act 2022, recognised that there is no specific provision in the Act to tax the profits/gains of the transactions in Virtual Digital Assets (VDAs), and thus provided to tax such income by introducing (i) a new sub section (47A) in section 2 to define a virtual digital asset, (ii) a new section 116BBH to provide for the rate of taxation of gains arising from VDAs and the method of computation of such taxable gains (iii) amended the explanation to section 56(2)(x), new section 1948 for TDS on transactions Involving VDAs. to include VDAs and (iv) Introduced a new section 194S for TDS on transactions involving VDAs.

3.5 Based on reasons discussed herein above, the assessee's primary contention that Bitcoin is a capital asset within the meaning of section 2(14) of the Act and that the gains arising there under be taxed as capital gains was rejected and the said gains was taxed as Income from other sources as under-

Total sale Consideration (from Bitcoin)		Amount (in Rs.) 6,69,49,620/-
Less: (i) Cost of acquisition	5,05,155/-	
(ii) Related Expenses	1,47,724/-	6,52,879/-
Net gains taxed under the head 'Income from other sources'		6,62,96,741/-

Accordingly, the assessee's claim for exemption u/s 54F of the Act was also rejected.

4. Aggrieved from the above finding of the Assessing Officer, the assessee preferred an appeal before the Id. CIT(A). Id. CIT(A) after considering the arguments and submission filed by the assessee disposed the appeal of the assessee by holding as under:-

"4. Decision:-

Ground No.1:- The only ground of appeal is an addition of Rs. Rs.6,62,96,741/- by the Ld. AO by not treating the sale of Crypto Currency of Rs.6,69,49,620/- as long term capital asset and taxed as 'Income From Other Sources.'

As per the facts of the case, during the course of assessment proceedings, the Ld. AO observed that assessee had purchased Crypto Currency (Bitcoins) during F.Y.2015-16 amounting to Rs.5,05,155/- and sold the same during the F.Y.2020-21 at a consideration of Rs.6,69,49,620/- after claiming indexed cost of Rs.5,75,953/- on the purchase of Bitcoin, having also taken the set off of losses from shares of Rs.2,331/-. The appellant further claimed an exemption u/s 54F of the Act amounting to Rs.4,95,68,910/-, thereby offering Rs. 1,66,54,702/- as Long Term Capital Gains on the sale of Bitcoins at the tax rate of 20%. The Ld. AO contended that Crypto Currency (Bitcoins) was not an asset as per section 2(14) of the Act, hence, the transfer as per section 2(47) as Long Term Capital Gain was not applicable in the case of the appellant. The Id. AO accordingly disallowed the claim of exemption u/s 54F of the assessee and made the impugned addition thereof under the head 'Income From Other Sources'.

The facts of the case and the submission of the appellant have been considered. Section 2(14) of the Act which defines "Capital Asset" as it stood at the time of both the purchase and the sale of Crypto Currency (Bitcoins) does not describe Crypto Currency (Bitcoins) as a Capital Asset either implicitly or explicitly thereof. The "Virtual Digital Assets" which contains reference to Crypto Currencies has only been defined as per section 2(47A) of the Act with effect from 01.04.2022.

In such cases of incomes falling under residuary status, the same have to be taxed as per section 56 of the Act. Hence, the action of Ld. AO in denying the benefit of section 54F as per Long Term Capital Gains is seems to be logical.

The appellant has annexed the assessment orders in the cases of Ashok Kumar Asawa and Prakash Chand Jain (Father of the appellant) wherein the income has been taxed as Long Term Capital Gain by the Ld. AO treating Crypto Currency as Capital Asset u/s 2(14) of the Act. Since, these are assessment orders which were adjudicated by different Ld. AO and not a matter of appeal before me, I have no comments to offer on the same. Further, there can be different views on interpretation of provisions of Act, this is how the law develops, the views on a legal subject can not be restrict to a water tight compartment. The can be dynamic and incongruent.

Further, section 115BBH inserted by Finance Act 2022 w.e.f. 01.04.2023 defines the structure for taxation of such kind of Crypto Currencies. The intention of the legislature through the section is to allow Capital Gains in the sale of Crypto Currencies albeit at a higher rate of 30% without giving the benefit of infrastructure cost while claiming the indexed cost of aquisition and disallowing setting off losses against any other income.

In view of the discussion the addition made by the Ld. AO of Rs.6,62,96,741/-is hereby confirmed. The ground of appeal no. 1 is hereby dismissed."

5. As the assessee did not find any favour, from the appeal so filed before the Id. CIT(A)/NFAC, the assessee has preferred the present appeal before this Tribunal on the ground as reproduced hereinabove. The Id. AR of the assessee in support of the various grounds so raised has filed the written submission which reads as follows:

1. The assessee did his Bachelor of Engineering from Bangalore in computer & information science in the year 2004. He worked with IT company Mind Tree Ltd. as software developer from 2004 to 2009. Thereafter he did his MBA in 2012 and joined Infosys Ltd. as senior software consultant and IT project manager till 2024. Presently he has lost his job at Infosys and unemployed.

2. The regular source of income of assessee is income from salary and from capital gain on sale of shares/ mutual funds. During the year under consideration assessee earned long term capital gain on sale of bitcoin at Rs.6,63,73,667/- and after claiming deduction u/s 54F of Rs.4,95,68,910/-, filed the return on 30.12.2021 declaring total income of Rs.1,74,39,670/-.

3. The AO at Para 3.8 of the order observed that Act has not defined the term 'property' and therefore it must be construed in its plain natural meaning. With a property, a person actually owns something of value. This is not so with crypto currency/ virtual digital asset. Crypto currency is also not a currency. Therefore, it is not an asset within the meaning of section 2(14) of the Act. FA, 2022 has defined Virtual Digital Asset (VDA) u/s 2(47A) of the Act and the rate of taxation on gain from VDA is provided by section 115BBH of the Act. Accordingly AO computed gain on sale of bitcoin at Rs.6,62,96,741/- and taxed the same under the head income from other sources.

4. The Ld. CIT(A), NFAC observed that section 2(14) as it stood at the time of purchase & sale of crypto currency (bitcoins) does not described it as a capital asset either implicitly or explicitly. The VDA is defined u/s 2(47A) only w.e.f. 01.04.2022 and therefore, the income falling under residuary status has to be taxed u/s 56 of the Act. Further the assessment order in case of Ashok Kumar Asawa and Prakash Chandra Jain where gain from crypto currency was taxed under the head capital gain, since these assessment orders were passed by a different AO and not a matter of appeal, he refrained from offering any comment. Accordingly the order passed by AO is upheld.

Submission:-

1. The only issue in the present case is whether crypto currency (bitcoin) is a capital asset or not. The capital asset is defined u/s 2(14) of the Act to mean "Property of any kind held by an assessee, whether or not connected with his business or profession." Explanation 1 to this sections reads as under:-

For the removal of doubts, it is hereby clarified that "property" includes and shall be deemed to have always included any right in or in relation to an Indian company, including right of management or control or any other right whatsoever.

Thus all rights are property and thereby is a capital asset. Therefore, the AO is incorrect in holding that to qualify as capital asset one should actually own something as property in as much as even if a person has a right or claim on a property it is also a capital asset u/s 2(14) of the Act. Further section 2(47) of the Act defines transfer in relation to a capital asset to include sale, exchange or relinquishment or extinguishment of any right therein. Therefore in the present case the gain on sale of bitcoin which was acquired by the assessee during FY 2015-16 for Rs.5,05,155/- and sold in FY 2020-21 for Rs.6,69,49,620/- results into capital gain and not chargeable under the head income from other sources.

2. It may be noted that by FA, 2022 w.e.f. 01.04.2022, following sections were introduced in the FA to deal with the taxation of Virtual Digital Asset.

Section 2(47A)- Virtual Digital Asset means:-

- (a) any information or code or number or token (not being Indian currency or foreign currency), generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration, with the promise or representation of having inherent value, or functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and can be transferred, stored or traded electronically;
- (b) a non-fungible token or any other token of similar nature, by whatever name called;
- (c) any other digital asset, as the Central Government may, by notification in the Official Gazette specify:

Provided that the Central Government may, by notification in the Official Gazette, exclude any digital asset from the definition of virtual digital asset subject to such conditions as may be specified therein.

Explanation--For the purposes of this clause -

- (a) "non-fungible token" means such digital asset as the Central Government may, by notification in the Official Gazette, specify;
- (b) the expressions "currency", "foreign currency" and "Indian currency" shall have the same meanings as respectively assigned to them in clauses (h), (m) and (q) of section 2 of the Foreign Exchange Management Act, 1999.]

Thus as per section 2(47A) also, crypto currency is specifically considered as an asset. Further section 115BBH(3) which deals with taxation of income from VDA provides that "For the purposes of this section, the ward "transfer" as defined in clause (47) of section 2, shall apply to any virtual digital asset (VDA), whether capital assets or not".

Thus it is clear that even the legislature has clarified that virtual digital asset may be a capital asset.

3. As per section 45(1), any profit or gain arising from the transfer of capital assets shall be chargeable to tax as Capital Gains. Since crypto currency is specifically incorporated in the statute as an asset, it means that even before 01.04.2022 it was an asset and therefore gain on sale of crypto currency has to be taxed under the head capital gain and not under the head income from other sources.

4. The Ld. CIT(A) has referred to section 56 of Income tax Act which provides that "Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E (i.e. Salaries, Income From house property, Profit and gains of business or profession, Capital Gain). In the present case, gain on sale of crypto currency is chargeable to tax under the head Capital Gain and therefore it cannot be charged to tax under the head income from other sources.

5. We may further submit that the only source of income of assessee is from salary and he has invested his savings in shares/ crypto currency. He is not regularly dealing in purchase/ sale of shares/ crypto currency. His intention is to hold for long term capital gain which is more evident from the fact that he made investment in crypto currency during FY 2015-16 which was sold in FY 2020-21 and the gain on sale of crypto currency is invested for purchase of house. This proves that intention of the assessee in making investment in crypto currency is to hold it and to earn long term capital gain.

6. It is further submitted that even the AO in case of Sh. Ashok Kumar Asawa for AY 2018-19 and in case of Sh. Prakash Chand Jain for AY 2018-19 has taxed the gain on sale of crypto currency under the head capital gain. The relevant extracts of these assessment orders is as under:-

In case of Sh. Ashok Kumar Asawa

Para 4.6- Conclusion Drawn.

Keeping in view of the said facts of the case, it is concluded that assessee has earned STCG in trading of Crypto Currency at Rs. 2,42,892/-, over and above the STCG shown in his ITR and the same has been further admitted *vide* his reply submitted on 16.03.2023, is being added to his taxable income for the assessment year 2018-19 and charged tax accordingly."

In case of Prakash Chand Jain

"In view of the above, the Virtual/Digital/Crypto Currency transactions cannot be termed as currency transactions or securities trading or commodity trading and the same would be treated as Capital Asset. Section 2(14) of I.T. Act 1961 defines capital asset as property of any kind held by an assessee, whether or not connected with his business or profession. "

7. Otherwise also, Hon'ble Supreme Court in case of *CIT v. Vegetable Products Ltd.* [1973] 88 ITR 192 (SC) has held that where two reasonable constructions of a taxing provision are possible, then the construction which favours the assessee must be adopted. Further Hon'ble Supreme Court in case of *Chief Commissioner of CGST v. M/s Safari Retreats Pvt. Ltd. Civil Appeal No. 2948 of 2023* order dt. 03.10.2024 at page 32, para 25(d) has held that if two interpretations of a statutory provision are possible, the court ordinarily would interpret the provision in favour of a taxpayer and against the revenue. Therefore also, the gain on sale of crypto currency (bitcoin) prior to AY 2022-23 is chargeable to tax as capital gain.

Ground No.2

The Ld. CIT(A), NFAC has erred on facts and in law in denying the claim of deduction u/s 54F of Rs.4,95,68,910/- on the long term capital gain declared on sale of crypto currency by taxing such gain under the head income from other sources.

Facts & Submission:-

1. Since AO treated the gain on sale of crypto currency as chargeable to tax under the head income from other sources, he did not allowed deduction u/s 54F of the Act.

2. As submitted above, the gain on sale of crypto currency is chargeable to tax under the head long term capital gain since assessee has hold crypto currency for more than 36 months, therefore, AO be directed to allow claim of deduction u/s 54F of the Act."

6. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the assessee is salaried employee. Assessee after completing the B. E. in Computer science worked in Mind tree 2004-2009 and thereafter when he completed his MBA he joined Infosys. While in service in 2015-16 he invested a sum of Rs. 5,05,155/- out of his regular income. So the source of investment is not in dispute. In the assessment proceeding the assessee filed a detailed submission stating that as to how this transaction is chargeable to tax under the head Capital Gain. The Id. AR of the assessee stated that in the amendment made in the law has given the transaction name as Virtual Digital Assets[VDA]. So till the law amendment even the law makers consider that as the VDA. So merely the law has been amended subsequently that law does not apply retrospectively and the intention of the assessee was to invest his tax paid as an investment and the gain which he has offered cannot be considered as other income and thereby denial of benefit of capital assets is not in accordance with law. To drive home to this contention Id. AR of the assessee invited attention to the definition clause 2(47) & 2(47A) and provision of section 14, 56 and provision of section 115BBH and submitted that even the law recognise it as assets but subsequently intended to charge as other income which are prospective in nature. Therefore, the treatment given by the assessee be accepted as capital assets in the hands of the assessee. The Id. AR of the assessee also invited attention to the assessment order of Ahokkumar Asawa (AFHPA7809P) wherein similar issue was decided by the national faceless assessment unit as capital assets *vide* para 4.6 of that order placed on record and submitted that when two views are possible view favourable to the assessee be taken as held by the apex court in the case of Vegetable Products Ltd. The Id. AR also relied on the finding of apex court in the case of Safari Retreats P. Ltd.(*supra*). If the contention of the assessee for capital assets is accepted then issue of deduction u/s.54F is consequential in nature.

7. The Id DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A). The Id. DR vehemently submitted that the assessee dealt with the dark web illegal transaction which was not recognised transaction and there cannot be capital gain in the hands of the assessee. Even the RBI has cautioned the public not to deal with such type of transactions. The transaction undertaken by the assessee does not fall in the legal definition given under the Act for capital assets. Even the law has recognised such type of transaction as other income and to be taxed as other income.

8. We have heard the rival contentions and perused the material placed on record. In this appeal the assessee has effectively taken two grounds which are interrelated and deal with the chargeability of gain on sale of bitcoin which was acquired by the assessee during financial year 2015-16 for Rs.5,05,155/- and sold in FY 2020-21 for Rs.6,69,49,620/-. The mute question that is to be decided as to whether the proceeds received on sale of Bitcoin is chargeable to tax as capital gain or income from other source. The brief facts related to the dispute is that the assessee is a Bachelor of Engineering, had worked with IT company Mind Tree Ltd. as well as Infosys Ltd. While in service in 2015-16 he invested a sum of Rs. 5,05,155/- out of his regular income. So the source of investment is not in dispute. The regular source of income of assessee is income from salary, Income from other source and income from capital gain on sale of shares/ mutual funds. During the year under consideration assessee offered long term capital gain on sale of bitcoin at Rs.6,63,73,667/- and after claiming deduction u/s 54F of Rs.4,95,68,910/-, declaring total income of Rs.1,74,39,670/- for tax purpose. The return of income was filed on 30.12.2021.

Thereafter, the case of the assessee was selected for complete scrutiny through "Computer Assisted Selective Scrutiny (CASS)". The reason for Selection in Complete Scrutiny was "Capital Gains Deduction Claimed" by issuing notice u/s 143(2) of the Act on 28.06.2022. Notices were issued from time to time and were complied by the assessee. The Id. AO in the assessment proceeding noted that the the assessee has purchased Bitcoin (Crypto Currency) during F.Y 2015-16, amounting to Rs. 5,05,155/- and sold Bitcoin (Crypto Currency), during the FY 202021, amounting to Rs. 6,69,49,620/-. Against that sale of Bitcoin the assessee claimed indexed cost of purchase of Bitcon for Rs. 5,75,953/-on purchase of Bitcoin, taken set off of losses from shares Rs. 2,331/-and claimed exemption u/s 54F of the Act amounting to Rs. 4,95,68,910/-. The balance amount of Rs. 1,66,54,702/- was considered as Long Term Capital Gain on the sale of Bitcoin and accordingly assessee paid taxes @ 20%. As the reasons for selection of the case was deduction claimed by the assessee the Id. AO called from the assessee to explain as to how he is eligible for long term capital gains, as well as for exemption u/s 54F of the Act, in accordance with the provisions of the Act from the sale of Bitcoin (Crypto Currency) (Virtual Digital Assets) *vide* notice dated 04.11.2022 issued u/s 142(1) of the Act. The assessee contended that their claim is in accordance with the provision of law and filed a detailed reply. The Id. AO considered the submission of the assessee, but was not found to be acceptable because the assessee states that he holds Bitcoins for more than 3 years and thus claimed the gains on sale as being long term capital gains. The assessee contended that the Bitcoins, [Crypto Currency) (Virtual Digital Assets) is an asset as per section

2(14) of the Act, which has been transferred as per provision of section 2(47) of the Act and accordingly he has offered the gain arising out of the sale of that asset as long term capital gains. The Id. AO went on to observe that as per the amendment made in the Act effective from financial year 2020-21, the Bitcoin is nowhere defined as an asset u/s 2(14) and accordingly transfer of capital asset u/s 2(47) of the Act is not applicable in the assessee's case and accordingly the claim of assessee for considering the Bitcoins as an asset u/s 2(14) of the Act and thereby claim of long term capital gains was not considered. Based on these contentions the assessee was asked to show cause on 15.12.2022 as to why the tax on the net gains of Rs. 6,62,96,741/- on sale of Bitcoins be taxed as 'Income from other sources' and accordingly his claim for exemption u/s 54F of the Act was also not to be considered as allowable. In response the assessee filed a detailed reply not agreeing with the variation proposed in the assessment proceeding and relied on the claim and head of income filed in the return of income, based on the detailed reply filed. The assessee in his reply to the aforesaid show cause notice, contended that as per provision of section 2(14) the assessee owns capital asset and there is no exclusion of the property held by the assessee in that section. The assessee also contended that as per section 2(14) point (a), it can be concluded that if any property is not explicitly mentioned in the exclusion list of section 2(14), it should be treated as 'capital asset by default considering it as a property of any kind.

The Id. AO did not find the submission of the assessee acceptable because a Bitcoin does not qualify to be a 'property', such as to be a capital asset within the terms of section 2(14) of the Act. Since the Act does not define the term 'property', it must be construed in its plain natural meaning, subject to the context in which that expression occurs (Ref. to JK Trust v. CIT/EPT, 23 ITR 150, Bom) and contended that a capital asset is meant to be defined in a wide sense, it yet needs to be a property in the ordinary sense of the word, to then fall within the definition of a capital asset. In its ordinary sense, a property needs to have inherent benefits, which endows it with value. The Id. AO also noted that to qualify the property or a real asset class, the assessee needs to demonstrate that it is a Stock or an equity Interest in a company and a share in its future earnings, bonds to give a promise from a company to pay a certain amount plus interest, an asset having building / structure or a piece of land or that of gold or a precious metal or commodities having utility and value such as oil, gas, metals etc. All the character of the assets was missing in the assets that the assessee contended. The Id. AO also contended that these assets are worth on a given day, but they are real things/property that anyway have value, and independent of what the market says, they have inherent value at any moments and that is not so with a crypto currency/VDA, where when anyone can buy a crypto or own nothing, except your right to sell your share of nothing to another willing buyer. A crypto, unlike any other property has no independent value or inherent utility and its value is entirely determined by what others will pay on a given day. The Id. AO further went on to observe that a crypto currency is not a currency either. It is not a legal tender. It is merely disruptive and uses technology by either block chain technology, when you buy the crypto token. The Bitcoin, therefore, does not own an investment in a real asset class or property, such as to qualify to be an asset, within the meaning of section 2(14) of the Act. With that reasoning and focusing the amendment made *vide* Finance Act 2022, wherein revenue releasing the fact that there is no specific provision in the Act to tax the profits/gains of the transactions in Virtual Digital Assets (VDAs), and thus provided to tax such income by introducing (i) a new sub section (47A) in section 2 to define a virtual digital asset and a new section 115BBH to provide for the rate of taxation of gains arising from VDAs, new section 194S for TDS on transactions Involving VDAs and the method of computation of such taxable gains simultaneously amending the explanation to section 56(2)(x) and thereby taken a view that the income should be taxed as other income and not as capital gain and consequently the claim of deduction u/s.54F was also denied to the assessee.

When the matter carried before the Id. CIT(A) who has held that Crypto Currency (Bitcoins) was not an asset as per section 2(14) of the Act, hence, the transfer as per section 2(47) as Long Term Capital Gain was not applicable in the case of the appellant and accordingly he also confirmed the deduction denied u/s. 54F to the assessee. As regards the contention of the assessee that Section 2(14) of the Act which defines "Capital Asset" as it stood at the time of both the purchase and the sale of Crypto Currency (Bitcoins) does not describe Crypto Currency (Bitcoins) as a Capital Asset either implicitly or explicitly thereof. The "Virtual Digital Assets" which contains reference to Crypto Currencies has only been defined as per section 2(47A) of the Act with effect from 01.04.2022 is required to be taxed as incomes falling under residuary status, the same have to be taxed as per section 56 of the Act. As regards the reliance of similar issue decided in the case of other assessee Shri Ashok Kumar Asawa and Prakash Chand Jain (Father of the appellant) wherein the income has been taxed as Long Term Capital Gain by the Ld. AO treating Crypto Currency as Capital Asset u/s 2(14) of the Act. Since, these are assessment orders which were adjudicated by different Ld. AO and not a matter of appeal before him, he has not considered the plea of the assessee. The Id. CIT(A) further went on observing that since the section section 115BBH inserted by Finance Act 2022 w.e.f. 01.04.2023 defines the structure for

taxation of such kind of Crypto Currencies. The intention of the legislature through the section is to allow Capital Gains in the sale of Crypto Currencies albeit at a higher rate of 30% without giving the benefit of infrastructure cost while claiming the indexed cost of acquisition and disallowing setting off losses against any other income and thereby the appeal of the assessee was dismissed.

Before us as we note that the assessee effectively taken to ground one that the income be taxed as capital gain and not as other income and if the income be considered as capital gain consequential deduction claimed u/s. 54F be considered. Before we proceed to decide the first issue we would like refer to the connected provisions of law as applicable to the year under dispute. First we refer the provision of section 2(14) and 2 (47) of the Act which reads as under :

Section 2(14)

(14) "capital asset" means—

- (a) property of any kind held by an assessee, whether or not connected with his business or profession;
- (b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (c) any unit linked insurance policy to which exemption under clause (10D) of section 10 does not apply on account of the applicability of the fourth and fifth provisos thereof, but does not include—
 - (i) any stock-in-trade [other than the securities referred to in sub-clause (b)], consumable stores or raw materials held for the purposes of his business or profession ;
 - (ii) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes—
 - (a) jewellery;
 - (b) archaeological collections;
 - (c) drawings;
 - (d) paintings;
 - (e) sculptures; or
 - (f) any work of art.

Explanation.—For the purposes of this sub-clause, "jewellery" includes—

- (a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;
- (b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel;
- (iii) agricultural land in India, not being land situate—

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- (iv) 6¹/₂ per cent Gold Bonds, 1977, or 7 per cent Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government;
- (v) Special Bearer Bonds, 1991, issued by the Central Government ;
- (vi) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015 notified by the Central Government.

Explanation 1.—For the removal of doubts, it is hereby clarified that "property" includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

Explanation 2.—For the purposes of this clause—

- (a) the expression "Foreign Institutional Investor" shall have the meaning assigned to it in clause (a) of the Explanation to section 115AD;
- (b) the expression "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

Section 2(47)

(47) "transfer", in relation to a capital asset, includes,—

- (i) the sale, exchange or relinquishment of the asset ; or
- (ii) the extinguishment of any rights therein ; or
- (iii) the compulsory acquisition thereof under any law ; or
- (iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment ; or
- (iva) the maturity or redemption of a zero coupon bond; or
- (v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882) ; or
- (vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

Explanation 1.—For the purposes of sub-clauses (v) and (vi), "immovable property" shall have the same meaning as in clause (d) of section 269UA.

Explanation 2.—For the removal of doubts, it is hereby clarified that "transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India;

Plain natural definition of 'property' as is given in the Act property of any kind held by an assessee, whether or not connected with his business or profession; which a person actually owns something of value. Though crypto currency / virtual digital asset is also not a currency but it is not an asset within the meaning of section 2(14) of the Act. The amendment made in the Finance Act, 2022 has defined Virtual Digital Asset (VDA) u/s 2(47A) of the Act wherein the name given is of virtual digital assets. Thus, considering the plain vanilla meaning before the amendment as is to be understood at the time of purchase & sale of crypto currency (bitcoins) which is a right of the assessee attached to the investment made. If we consider the definition of capital asset as given in section 2(14) of the Act which say that "Property of any kind held by an assessee, whether or not connected with his business or profession." Explanation 1 to this sections reads that "property" includes and shall be deemed to have always included any right in or in relation to an Indian company, including right of management or control or any other right whatsoever. Thus all rights are property and thereby the right of the assessee in Bitcon though a virtual assets is a capital asset.

Therefore, the AO is incorrect in holding that to qualify as capital asset one should actually own something as property in as much as even if a person has a right or claim on a property it is also a capital asset u/s 2(14) of

the Act. Further section 2(47) of the Act defines transfer in relation to a capital asset to include sale, exchange or relinquishment or extinguishment of any right therein. Therefore in the present case the gain on sale of bitcoin which was acquired by the assessee during FY 2015-16 for Rs.5,05,155/- and sold in FY 2020-21 for Rs.6,69,49,620/- results into capital gain and not chargeable under the head income from other sources. We note that Finance Act, 2022 w.e.f. 01.04.2022, the section 2(47A) has been inserted thereby the Virtual Digital Asset meaning was assigned and that including the underlying assets Bitcoins. Thus even the law maker has to clarify that virtual digital asset may be a capital asset and that assets to be treated as income to be taxed as special rate. The relevant amendment in the law is prospective as is evident from the memorandum explaining the budgetary provision which reads as under:

Scheme for taxation of virtual digital assets

Virtual digital assets have gained tremendous popularity in recent times and the volumes of trading in such digital assets has increased substantially. Further, a market is emerging where payment for the transfer of a virtual digital asset can be made through another such asset. Accordingly, a new scheme to provide for taxation of such virtual digital assets has been proposed in the Bill.

2. The proposed section 115BBH seeks to provide that where the total income of an assessee includes any income from transfer of any virtual digital asset, the income tax payable shall be the aggregate of the amount of income-tax calculated on income of transfer of any virtual digital asset at the rate of 30% and the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the aggregate of the income from transfer of virtual digital asset.

2.1 However, no deduction in respect of any expenditure (other than cost of acquisition) or allowance or set off of any loss shall be allowed to the assessee under any provision of the Act while computing income from transfer of such asset.

2.2 Further, no set off of any loss arising from transfer of virtual digital asset shall be allowed against any income computed under any other provision of the Act and such loss shall not be allowed to be carried forward to subsequent assessment years.

2.3 This amendment will take effect from 1 st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

Even otherwise, if we further peruse provision of section 45(1) which says, any profit or gain arising from the transfer of capital assets shall be chargeable to tax as Capital Gains. Since crypto currency is specifically incorporated in the statute as an asset, it means that even before 01.04.2022 it was an asset and therefore gain on sale of crypto currency has to be taxed under the head capital gain and not under the head income from other sources before the law maker made the specific provision in the Act. Even otherwise, looking to the profile of the assessee we note that the only source of income of assessee is from salary and he has invested his savings in shares / crypto currency. He is not regularly dealing in purchase/ sale of shares/ crypto currency. His intention is to hold for long term capital gain which is more evident from the fact that he made investment in crypto currency during FY 2015-16 which was sold in FY 2020-21 and the gain on sale of crypto currency is invested for purchase of house. This proves that intention of the assessee in making investment in crypto currency is to hold it and to earn long term capital gain.

Before us the ld. AR of the assessee filed the copy of the assessment order of Shri Ashok Kumar Asawa for AY 2018-19 and in case of Sh. Prakash Chand Jain for AY 2018-19 wherein the similar income was taxed as capital gain. The relevant extracts of these assessment orders reads as under:-

In case of Sh. Ashok Kumar Asawa

Para 4.6- Conclusion Drawn.

Keeping in view of the said facts of the case, it is concluded that assessee has earned STCG in trading of Crypto Currency at Rs. 2,42,892/-, over and above the STCG shown in his ITR and the same has been further admitted *vide* his reply submitted on 16.03.2023, is being added to his taxable income for the assessment year 2018-19 and charged tax accordingly."

In case of Prakash Chand Jain

"In view of the above, the Virtual/Digital/Crypto Currency transactions cannot be termed as currency transactions or securities trading or commodity trading and the same would be treated as Capital Asset.

Section 2(14) of I.T. Act 1961 defines capital asset as property of any kind held by an assessee, whether or not connected with his business or profession. "

As we note that the revenue has in two cases cited herein above has taken a view that the income so earned is taxable under the head capital gain. The same cannot be considered as income from other source merely on the reasons that the assessee by taking that capital gain income also claimed deduction which is otherwise permissible.

Thus, even otherwise also when there are two views are possible the view which is favorable to the assessee be considered as held by the Hon'ble Supreme Court in case of *CIT v. Vegetable Products Ltd.* [1973] 88 ITR 192 (SC) . The similar finding is given by the apex court in the case of *Chief Commissioner of CGST v. M/s Safari Retreats Pvt. Ltd.* Civil Appeal No. 2948 of 2023 order dt. 03.10.2024 at page 32, para 25(d) has held that if two interpretations of a statutory provision are possible, the court ordinarily would interpret the provision in favour of a taxpayer and against the revenue. Therefore also, the gain on sale of crypto currency (bitcoin) prior to AY 2022-23 is chargeable to tax as capital gain. Based on the discussion so recorded ground no. 1 raised by the assessee is allowed.

Ground no. 2 raised by the assessee raised by the assessee is against the denial of claim of deduction u/s 54F of Rs.4,95,68,910/- on the long term capital gain declared on sale of crypto currency by taxing such gain under the head income from other sources. As we have in ground no. 1 held that the income on sale of crypto currency is chargeable to tax under the head long term capital gain since assessee has hold crypto currency for more than 36 months, therefore, AO is directed to allow claim of deduction u/s 54F of the Act to the assessee.

Based on this observation ground no. 2 raised by the assessee is allowed.

Ground no. 3 being general in nature does not require any finding.

In the result, the appeal of the assessee is allowed.

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*In favour of assessee.