

Tax Liability on Fantasy Sports in India

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Abstract

Fantasy sports are virtual games and currently, these games are trending because of pandemic causes due to Covid 19. In this sport, participants create virtual teams of their favorite players and then they performed. Many times, fantasy sports are misunderstood as gambling because there is a debate between whether fantasy sports are a game of skill or a game of chance. but after the legalization of fantasy sports, it is not considered gambling. Here, this article talks about Taxation on fantasy sports. And answer some research questions like how much tax would one pay for fantasy sports, what is the status of fantasy sports companies in case of taxation, etc.

Introduction

Sports play an important role and are an integral part of Indian society. Top sports like Cricket, Rugby, football, tennis are followed by millions of fans. Nowadays, there is a craze for fantasy sports, which are a type of online games where participants assemble virtual teams of real players of professional sports. Online fantasy sports gaming is a skill-based online sports platform, in which the team of the participants compete with the statistical performance of those players. According to the team's performance, they get the points from the team manager which are manually calculated by the league commissioner. Fantasy sports is a way for fans to become more engaged with their favourite sports. The evolution of fantasy sports began in the United States of America in the year 1952. In India, fantasy sports came in the year 2001 through ESPN star sports. The Indian fantasy sports market crossed the line of 100 million players and is still growing continuously. [According to the reports by the Federation of Indian Fantasy Sports the Fantasy market could be worth \\$3.7](#)

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[billion by 2024](#). Due to the incredible popularity of sports, the fantasy sports market is growing. In expansion to just being bystanders of the respective sporting event, many viewers want to take a more active role in the outcome of various sports tournaments by participating in fantasy sports. Fantasy sports increases the involvement of participants. In India, betting is not legal and since fantasy sports are considered a game of skill, therefore it results in more persons to participate in it. Though fantasy sports in India started in 2005, it took nearly a decade to attain favour. The reason behind this is a lack of technological advancement and awareness about Fantasy Sports, however now the increased availability of affordable smartphones, internet connections, give participants a platform to join fantasy sports and social media helps make aware of this. The main goal of fantasy sports is to make the player skilful so that he can take a personal decision and can gain financially. The online gaming industry is one of the fastest-growing industries in India and some of the active sports platforms are Dream 11, Mobile premier league, Hala play, My11Circle, My Team 11, Balle Bazzi, iGamio, and Nostra Pro etc.

In India legality of fantasy sports, revolves around the debate of; 'Game of Skill or Game of Chance' as a result of which the regional law governing online games and fantasy sports becomes ambiguous and vague. While, there is no central legislation in India for fantasy sports, [The Public Gambling act 1867](#), controls gambling and betting. The games which involve real skills are not covered under the said Act. Under the Indian Constitution, gambling and betting are subjects covered under the State list so the states can legislate upon them. Though fantasy sports are based on skills and real talent, they are banned in some states such as Andhra Pradesh, Assam, Odisha, Telangana, Tamil Nadu etc. however the honourable Supreme Court, in the Case of K.R Lakshman vs State of Tamil Nadu, held that online sports or fantasy sports are games of skills and hence are Legal.

Central Research Questions

- 1) *How much tax is imposed on winnings?*
- 2) *Is there an online gambling tax in India?*
- 3) *Are Fantasy games mandated to pay the tax on their winnings?*

Taxation on Fantasy sports – Indian Perspective

The taxation aspects related to fantasy sports comes into the picture after their legality. The enforcement of tax is applied to these games. Therefore, as per Section 115B of the Income Tax Act Winnings in sports play on apps like Dream 11, My11 circle etc, are taxable. Such winnings include:

1) **Lotteries:** a state government imposed a tax of 28% on the face value of the ticket and again according to Section 115BB of the Income Tax Act winning of Lotteries are taxed at 30%.

2) **Horse Racing:** The Good and service Council imposed a tax on horse racing on the entire bet value and under [Section 194 BB of Income Tax](#) imposed a tax rate of 30% on the winnings earned from horse racing.

3) **Prize Competition:** Prize competition such as crossword puzzles, card games, etc are taxed at the rate of 30% according to [section 194B of Income Tax Act](#)

The tax is imposed on the winning amount and not on the participant's fee and under [Section 58\(4\) of the Income Tax Act](#), act there is no deduction or expenditure allowed to be claimed against such income. If prize money is given by any person, then he is accountable to compensate the tax of that prize. Therefore, there is no tax benefit on winning. If the winnings in any particular tournament exceed INR 10,000/-, then a tax rate of 30% is applied on the winnings Even though the person wins or loses he has to pay the tax, he doesn't get any kind of deduction for expenditure. Also, tax is on the amount he won and not on the amount he paid to participate in the game. The one who pays for winning needs to deduct TDS from that amount, if it goes beyond Rs 10,000.

Tax liability of the Players

According to Section 42 of the Income Tax Act, income that has accrued to or has been received by an assessee in the previous year shall be taxed in the assessment year. Players have to pay tax on the winning amount. For example, if a player pays Rs 1000 for participating in the event and win Rs 10,000 then the tax imposed on winning amount.

Section 145 of the Income Tax act states that, when there is an income from salary, house property, profits and gains of business, capital gains and income from other sources then that income is taxable. Here, online sports or fantasy sports are covered under income from other sources.

Also, under section 2(24) of the said act becomes activity includes winning from a lotteries, crossword puzzles, races, card games, etc all are taxable.

Tax liability of the E-Sports Companies

Under Rule 31 A of the Central Goods and Service Tax Act activities including lottery, betting, gambling and horse racing are covered on which 28% tax rate would be applicable. Those companies which provide services to the players are liable to pay tax on the pooled amount. The high court of Bombay in the case of [Gurdeep Singh vs Union of India](#) held that Gambling and betting are not part of fantasy sports and fantasy games depend on skills and not on chance. Therefore Goods and service tax charge only on the service fee, so they charge 18% on the amount of the service provided by Dream 11 and not on the whole amount pooled by the player. The main focus of Goods and Service Tax is on the term, 'Supply'. Also the high court states that there is a supply for consideration. Here online gaming Companies provide services of gaming and there is a consideration, in the form of registration fee, which they take from players. Therefore here in such cases companies are suppliers and thus according to Section 7(1)(B) of the act become liable to pay tax. As per section 15(1) of the CGST Act, the price which is paid for the supply of goods and services shall be the transaction value. But in the case of online gaming, the company charges a fixed amount from the player and a certain amount out of it taken by the player in the form of rewards, now the question is on which amount or how much amount can be taxed under CGST, so the amount which left with the company after giving rewards and incentives on that actual paid amount CGST is levied. While playing online games like rummy, poker etc we can earn money on which income tax would be levied. By making online gaming taxable government can increase public revenue. These tax implications may impact on business operations of the online gaming industry, and because of tax implications, consumers are not able to join the licensing system of the government. Also this will be loss for professionals players. Some models of online gaming are free to play but for additional features, money is required. most of the countries follow taxing based on platform fees or taxes imposed on entire stake value. These methods provide certainty and do not highlight regressive taxation. So games like rummy, poker, lottery are also charged by 18% of Goods and Services Tax and the tax is based on platform fee only.

Concluding Remarks

With the increasing technological advancement and availability of smartphones, the online gaming industry is benefiting a lot. Also, national wide lockdown due to Covid 19 pandemic, increase in the growth of the online gaming industry, as the youth is gradually becoming more inclined towards online games. The emergence of fantasy sports in India increased the interest in sports. Those who were casual viewers have now become dedicated fans. Fantasy games played a supportive role in managing social distancing norms during the pandemic. They ultimately encourage individuals to stay at home. They also allow the spectators to participate in the game. They help participants to gain a competitive advantage by learning about a certain athlete's abilities and skills. E-Sports have organized a competition for various games. This sport plays based on talent and knowledge but still, it has to give a tough fight for the debate of whether it is a game of skill vs a game of chance. E-sports cannot be considered as gambling because it needs skills. Fantasy sports has the stigma of gambling which lead to a negative public perspective, but apart from this the online gaming industry is also liable to pay tax. Fantasy sports offer two formats for the player, one is without an entry fee that is free to play and another is with an entry fee that is required to be paid in order to be able to play. On the second model, the format operator gains a registration fee on which the income tax is levied. E-sports and games of chance are different, e-sports needs talent, skills and professionalism. Online sports are defined by competition which is a risk and reward for being the best. Though the law does not provide a clear difference between the game of skill vs the game of chance, even fantasy games are not exempted from the ambit of taxation. Online gaming become a significant source of tax revenue for the government. Taxation on fantasy sports helps the government to recover the lost revenue in the Covid Pandemic period. Also, the fantasy sports industry collected FDI up to Rs 1500 crores. So it is one of the conceivable areas that boosts the economy

Fantasy sports in India has helped many individuals earn money by winning different games from their homes amid the coronavirus pandemic. This sector grows day by day and maybe creates a new career path and economic opportunity and creates an opportunity for employment for individuals. The rapid growth of online gaming would be crucial for fantasy sports companies and associations to come together and overcome the challenges on the path of fantasy sports to ensure and maintain growth. So, the judiciary and government need to make legislation on the regulation of fantasy sports in India, because fantasy sports are a rewarding sector, it shall provide many more economic opportunities if it gets a proper legal platform.