

Indexed at **Manupatra**

Taxation in Online Fantasy Sports – An Indian Perspective

By Manvee¹ and Ananya Gauri Agarwal²

Abstract

Fantasy sports is a kind of online multiplayer gaming platform, that allows people to make imaginary teams consisting of the representation of real players such as that in hockey, cricket, kabaddi, etc. This area of sports entered the Indian market in 2001 via ESPN Star Sports, though had been around since 1952, first introduced in the US. Now, by the year 2019, this sport has already reached 90 million players, and from the current statistics, India can be seen as the biggest market for fantasy sports. Though the legality of the game has been doubted, on the basis of whether it is a “game of chance” or “a game of skill.” If the fantasy sports platform is a “game of chance,” it is regulated by state regulations related to gambling. It can be seen in the recent Supreme Court judgment, by a bench of Just. Rohinton Nariman and Just. B.R.Gavai has held that the fantasy sports platform, Dream 11, is a “game of skill and not chance,” with due respect to the intricacies of the gaming platform. Hence, fantasy sports may legal or illegal based on the state laws in place. Seeing as how this industry is booming and thriving, the market that it is generating has huge potential. The taxation rules, for online gaming, enforce the tax collection to be split into two parts – One to be paid by the individual winning the amount in the game and the other to be paid by the company providing the gaming platform. The individual’s taxes are governed under Section 194B and 115BB of the Income tax act and the taxes paid by the gaming platform provider are governed by Section 15 of the Central GST act and Rule 31A(3) of the GST rules. This type of online gambling differs from other actionable claims and hence should be taxed separately. In this paper, we will discuss how much tax these platforms should be paying under the current taxation rules that apply to fantasy sports and if they differ based on “game of chance” or “a game of skill” criteria.

¹ Student of B.B.A LL.B (Hons.) at Chanakya National Law University Patna (Batch of 2025).

² Student of B.B.A LL.B (Hons.) at Chanakya National Law University Patna (Batch of 2025).

Indexed at **Manupatra**

Introduction

Fantasy Sports! This terminology is widely popular among people these days. The reason behind the popularity of this term is advancement in technology and High Internet penetration worldwide. The term Fantasy Sports is made up of 2 words Fantasy and Sport. When we say Fantasy Sports then *What do we actually mean by that?* Basically, in fantasy sports, the user puts together a virtual team of real-life sports players, and points are earned based on real-life data and statistics of the players which are converted into fantasy points. The better player performs in the real life the higher the fantasy points of the user playing the fantasy sport. Another question that often arises in the mind of people is that *How does the algorithm of fantasy sports work?* First and foremost, these sports are played online via Internet Connectivity where the participants in the game make their virtual imaginary teams which comprise of representations of real-life players of that particular sport for which the user is assembling his team. Secondly, the teams made by the users playing fantasy sports compete based on the real-life statistical performance of the players who are playing the actual game. The real-life performance of those players is then converted into points which are then compiled and totalled accordingly as the user has made their team in that particular fantasy sport.

Fantasy Sports have been popular worldwide for a long time but in India, the emergence of fantasy sports³ began in the last decade when key market players like Dream 11 & Mobile Premier League set their foot in India and with the advent of 4G Internet connectivity in India and cheap availability of Smartphones and most influential brand ambassadors such as Former Indian Cricket Team Captain Mahendra Singh Dhoni and Incumbent Captain Virat Kohli influenced the majority of the population to play fantasy sports in India specially the Youth. And within half a decade Fantasy Sports Market boomed in India and now India is a potential market for Fantasy Sports worldwide and it has contributed a hefty amount to the Indian Economy and still growing at a rapid pace. Fantasy Sports Market has immense potential to generate employment and cash flow to the Indian Economy as well as World Economy.

In India presently we don't have any statutory body for the regulation of Fantasy Sports but for a temporary period, it is being governed by the Federation of Indian Fantasy Sports (FIFS). FIFS

³ Legal Services India E-Journal, *Emergence of Fantasy Sports vis a vis Online Gambling*, Manvee, <https://www.legalserviceindia.com/legal/article-6525-emergence-of-fantasy-sports-vis-a-vis-online-gambling-an-indian-perspective.html> , accessed on 20th August, 2021.

Indexed at **Manupatra**

is a company incorporated under Section 8⁴ of the Indian Companies Act, 2013 with a purpose to self-regulate and promote the best and fair practices in Online Fantasy Sports in India. Federation of Indian Fantasy Sports⁵ (FIFS) was founded in the year 2017 as a national body to represent the interests of the Fantasy Sports Consumers in India and to protect their interests and set a fair level playing platform in Online Fantasy Sports in India.

Current status of Fantasy Sports

We are aware of the fact that the majority of the users of Online Fantasy Sports are youth worldwide and the increasing youth population is also one of the biggest factors which are contributing to the growth of Online Fantasy Sports apart from Internet Penetration & Cheap availability of Smartphones. Globally the Online Fantasy Sports market is expected to grow from \$20.36 Billion (2020) to \$22.31 Billion in the year 2021 having a compound annual growth rate (CAGR) of 9.5%. The Online Fantasy Sports market is expected to reach a valuation of \$38.60⁶ billion by the year 2025 at a Compound Annual Growth Rate of 14.7%. United Nations projects that across the globe in 2019 there were 1.2 billion people between the age group of 15-24 years which is in every 6 people 1 person is the youngster of this age group and this population is expected to see a surge by the year 2030 around 7% to 1.3 billion. So, this increasing youth population worldwide is contributing to the growth of the Fantasy Sports Industry and there is a reason behind that, the present youth spends more time on their smartphones rather than with their family, and with the extension of Social Media and Fantasy Sports, they have found a good platform to connect with more people and have enjoyable conversations and competition with their peers. Therefore, the youth population has immense potential to contribute to the growth of the fantasy sports industry.

The Indian Gaming Industry generated around INR 2600 crores for these supplementary industries which includes payment gateways, technology providers, media agencies, and other platforms, so it is evident from this data that how much potential the Fantasy Sports Market include to generate additional revenue and other opportunities for the people of India.

⁴ Formation of Companies with Charitable Objects, etc.

⁵ <https://fifs.in/> .

⁶ The Business Research Company, *Fantasy Sports Global Market to reach value of about \$38 billion in 2025*, 29th July, 2021, <https://www.thebusinessresearchcompany.com/press-release/global-fantasy-sports-market-2021>.

Role of Social Media in Fantasy Sports

Everyone is aware of the fact that after the advent of 4G internet facility and cheap availability of Mobile Data Social Media Boomed worldwide especially in India. As of now, India has a user base of 518 million social media users and it is expected to reach 1.5 billion by the year 2040. So, one can have an assumption how much big a role social media will play in expanding the userbase of the Fantasy Sports Platforms. Most of the fantasy sports companies to increase their subscriber base engage people on their social media handles such as Twitter, Instagram, Facebook; these companies there **hold contests** on their social media platforms and use their sponsors for giving prize money to the winners of the contest, this is one of the convenient ways to generate lead and build a follower base. Secondly, these fantasy sports companies also **give valuable advice to their followers** via their social media handles like Twitter & Instagram mostly. On their social media handles these companies used to update the statistics of the players which eventually help the Fantasy Sports Players to analyze the data of the player and formulate their respective teams accordingly. Thirdly, these companies regularly use to conduct Polls and ask questions on their social media handles, while asking questions and conducting polls these are the most popular methods to engage subscribers via discussions in comments and also generate new subscribers. Lastly, Fantasy sports companies use to answer the questions of the people on the social media handles, one of the most effective ways of increasing engagement among people, although they don't reply to every question, they do answer most of the questions. Another way to engage an audience is to ask them to pick their fantasy players according to their jerseys and in return ask them to comment on their favorite player in the comment section.

So, it is evident from the instances and the techniques used by the Online Fantasy Sports Companies *How Social Media Plays a major role* in engaging the existing subscribers and also generate new leads for the respective company.

Indexed at **Manupatra**

NITI Aayog on Fantasy Sports in India

A draft report titled '*Guiding Principles for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India*⁷' where NITI Aayog recommended that in India Online Fantasy Sports needs a self-regulatory organization for governance. In order to ensure consistent growth in the industry and removing the legal obstacles against all sorts of online real-money gaming in different-different states, a uniform countrywide regulation for Fantasy Sports is the need of the hour.

This report by NITI Aayog also claims that in terms of User base Indian Online Fantasy Sports has overtaken the United States Online Fantasy Sports Market recently, therefore banning fantasy sports in India will not be a good decision as this will discourage innovation in the online gaming sector which has seen a robust growth during the pandemic. In India Online Fantasy Sports have grown at a Compound Annual Growth Rate of 212%, Having 2 Million users in 2016 to 90 Million users at the end of the year 2019. It has also been mentioned in the report that over the next few years Fantasy Sports could attract a Foreign Direct Investment (FDI) of more than 10,000 Crores INR and not only this but it will also generate 1.5 billion online transactions by the year 2023. In India presently Fantasy Sports Industry standards are regulated by the Federation of Indian Fantasy Sports - FIFS which has already been discussed in the Introduction part. The role of the Federation is to set up self-regulating norms for the fantasy sports platforms until and unless the government comes out with any statutory rules and area-specific legislations.

Taxation on Online Fantasy Sports

With the boom in the e-sports industry, issues over payable tax have arisen. Current tax laws applicable are ⁸

- Indirect Tax
- Direct Tax

⁷ Inc42, *Niti Aayog Suggests Operating Standards For Online Fantasy Sports Platforms*, 6th Dec, 2020, <https://inc42.com/buzz/niti-aayog-suggests-operating-standards-for-online-fantasy-sports-platforms/>, accessed on 24th August, 2021.

⁸ In India, taxes are broadly classified into direct and indirect taxes. Direct taxes are those levied directly on the income of a person and levied as per provisions of the Income Tax Act, 1961. Indirect taxes are those, whose incidence is borne by a person upon purchase of goods and services for consumption, resale, etc. and levied in India as GST.

Indexed at **Manupatra**

Indirect tax is paid on the value of the services provided by the gaming platform⁹, whereas direct tax is paid by the company over their business income. While the users pay direct tax on the winning amount earned.

Indirect taxes

One of the major problems currently being faced by gaming companies is the distinction of a game into a game of skill or a game of chance/ gambling. GST rules have failed to offer the same distinction, which creates ambiguity on tax liability for different gaming operators, as their game may be treated as a gambling service or sports service, or online content service.¹⁰

Taxes on gambling activities are higher than on skill-based activities, to deter people from participating in them. Hence, tax officials often confuse the game of skills as gambling, resulting in higher tax liabilities.

In Fantasy Sports, there are two kinds of payments made - First, as an individual contribution to the collective prize, known as the "pool" and the other a commission fee paid to the company for access to the gaming platform. The pool is the amount that is distributed amongst the winners, and subsequently the amount upon which income tax is charged. The only amount retained by the company is the commission fee. However, due to ambiguity, taxes are often charged on both the pool money and the commission fee collected.¹¹

The Pool amount is however an actionable claim¹² and should not be charged with any GST.¹³ The Gurdeep Singh judgment¹⁴ confirmed this stance of holding the Pool amount as an

⁹ *Section 15(1) of the CGST Act* provides that value of supply of goods or services shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services.

¹⁰ Entry 999692 - gambling and betting services including similar online services attracts 28% tax, Entry 99965 - sports and recreational sports services attracts 28% tax, Entry 998439 - other online content attracts 18% tax, CGST Scheme of Classification.

¹¹ Aryan Babele, *Tax officials looking into how fantasy gaming companies calculate GST: report*, Medianama, 1st May, 2019, available at <https://www.medianama.com/2019/05/223-tax-officials-fantasy-gaming-companies-gst/> ; Further, since skill-based games are not within the ambit of gambling and betting, the concept of a totalizator is inapplicable to it since there are no stakes or betting pool in play.

¹² An actionable claim is a claim to an unsecured debt towards which an action, such as going to court, can be taken. *Section 3 of the Transfer of Property Act, 1882* defines an actionable claim as "a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property...".

¹³ *Entry 6 of Schedule III to the CGST Act, 2017* provides that actionable claims, other than lottery, betting & gambling are transactions which shall neither be treated as supply of goods nor a supply of services.

¹⁴ *Gurdeep Singh Sachar v. Union of India*, Bombay High Court, Criminal PIL, Stamp No. 22 of 2019, para 12-13. This decision of the Bombay HC was subsequently appealed before the Supreme Court, which dismissed it, although currently the SC has put a hold on the operation of the judgement.

Indexed at **Manupatra**

actionable claim falling outside the definition of supply.¹⁵ Foreign jurisdictions, including some European Union (“EU”) countries, also follow this approach¹⁶ of only taxing the gross gaming revenue (“GGR”) of companies. GGR is the difference between the Pool and the entry amount.¹⁷

Due to the miss-classification of the game of skills as gambling or betting, GST charges are higher, and clearly, gambling laws do not cover skill-based games.¹⁸ Hence, tax rules should distinguish between the two.¹⁹

Moreover, GST laws already have a more suitable category for taxing games of skills. The “other online content” category in GST law includes internet games “such as role-playing games (“RPGs”), strategy games, action games, card games, children’s games...”, and therefore should include games of skill as well.²⁰ Whereas gambling attracts a 28% GST, this classification is levied at the rate of 18%.²¹ Therefore, an appropriate valuation of supply and accurate classification of games of skill will help in avoiding any discrepancy between tax officials and operators.

Direct Tax

Most users in India participate in skill-based games and earn income upon winning a particular competition. Winnings from games of skill however are taxed equally as that with games of chance under the Income Tax Act 1961. No distinction has been made between the game of skill and chance, under the Income Tax Act, 1961. Hence, any prize money won from any game is regulated under one category of the Act, covering all games from lotteries to e-sports. All these

¹⁵ The term supply is inclusive and it also includes deemed and declared supply under the schedule I and II of the Act. Section 7 of the CGST Act, 2017 defines Supply as

(b) import of services for a consideration whether or not in the course or furtherance of business;

¹⁶ <https://assets.kpmg/content/dam/kpmg/mt/pdf/2017/11/mt-gambling-vat-exemption.pdf>

¹⁷ Chapter 3, tax issues, *Unpacking a Billion dollar industry: Digital Games and sports in India*, by IKIGAI Law, Internet and Mobile Association of India (IAMAI) Report [file:///C:/Users/Test/Desktop/Taxation%20in%20Fantasy%20Sports/IL-and-IAMAI Digital-gaming-report_02032021.pdf](file:///C:/Users/Test/Desktop/Taxation%20in%20Fantasy%20Sports/IL-and-IAMAI%20Digital-gaming-report_02032021.pdf). accessed on 25th August 2021.

¹⁸ ‘skill v/s chance issues in digital games’, *Unpacking a Billion dollar industry: Digital Games and sports in India*, by IKIGAI Law, Internet and Mobile Association of India (IAMAI) Report [file:///C:/Users/Test/Desktop/Taxation%20in%20Fantasy%20Sports/IL-and-IAMAI Digital-gaming-report_02032021.pdf](file:///C:/Users/Test/Desktop/Taxation%20in%20Fantasy%20Sports/IL-and-IAMAI%20Digital-gaming-report_02032021.pdf), accessed on 25th August 2021.

¹⁹ *Gurdeep Singh Sachar v. Union of India*, Bombay High Court, Criminal Public Interest Litigation, Stamp No. 22 of 2019, paragraph 13.

²⁰ *Explanatory Notes to the Scheme of Classification of Services*, Central Board of Indirect Taxes and Customs, available at http://gstcouncil.gov.in/sites/default/files/Explanatory_notes.pdf, page 72-73. accessed on 25th August 2021.

²¹ See Online gaming sector: Diversification and scale for online success, Edison Investment Research, July, 2019, available at <https://www.edisongroup.com/wpcontent/uploads/2019/07/GamingSectorReport2019.pdf> accessed on 25th August 2021.

Indexed at **Manupatra**

vastly different kinds of games are taxed at the uniform rate of 30% (plus cess).²² Indian courts have held many of these games, such as fantasy sports and rummy, to be games of skill²³ meriting different treatment than games of chance.²⁴

Moreover, several foreign jurisdictions have a separate direct taxation structure for games of skill and chance.²⁵ Germany and the Czech Republic even have a 0% tax rate on winnings from games of skill.²⁶ Games of skill rely on the judgment and knowledge of the player and therefore do not carry the risks or judgment associated with betting and gambling.²⁷ Differential tax treatment for games of skill will harmonize Indian tax law with gaming law jurisprudence.²⁸

Deductions are typically allowed for all income heads under the Income Tax Act 1961, except winnings from games.²⁹ Users also incur participation costs that merit deductions from the taxable amount.³⁰

²² These winnings are taxed at the flat rate of 31.2%. Section 115BB, IT Act. Further, if the winnings are greater than INR 10,000, the gaming company deducts TDS of any person at the same rate under Section 194B of the IT Act

²³ Section 1.4.1, Unpacking a Billion dollar industry: Digital Games and sports in India, by IKIGAI Law, Internet and Mobile Association of India (IAMAI) Report file:///C:/Users/Test/Desktop/Taxation%20in%20Fantasy%20Sports/IL-and-IAMAI_Digital-gaming-report_02032021.pdf

²⁴ State of Andhra Pradesh v. Satyanarayan, AIR 1968 SC 825; K. R. Lakshmanan v. State of Tamil Nadu, AIR 1996 SC 1153.

²⁵ Thibault Verbiest & Pascal Reynaud, Skill Game for Money in France: Is it Legal?, 18th May, 2011, available at <http://www.gaminglaw.eu/news/skill-game-formoney-in-france-is-it-legal/>, last accessed on 22nd March, 2020; https://kansspelautoriteit.nl/publish/library/6/guide_on_assessing_games_of_chance.pdf

²⁶ European Commission, Study of Gambling Services in the Internal Market of the European Union, 14th June, 2006, available at <http://ec.europa.eu/DocsRoom/documents/9725/attachments/1/translations/en/renditions/pdf>. Daily fantasy sports laws for European countries, Vinfotech, 30th April, 2018, available at <https://blog.vinfotech.com/fantasy-sports/fantasy-sports-laws-in-europe>

²⁷ The legislative intent was to disincentivize gambling and also earn revenue from those who indulge in it. See Memorandum explaining the provisions of the Finance Bill 1972, available at <https://www.incometaxindia.gov.in/budgets%20and%20bills/1972/10701000000353246.pdf>

²⁸ Most Gambling Laws in India carve out an exception for 'games of skill' from the purview of their gambling legislation. See Section 12 of the Public Gambling Act of 1867.

²⁹ Section 58(4), IT Act.

³⁰ See, Union of India & Ors. Etc. Etc vs Bombay Tyre International Ltd., 1984 SCR (1) 347.

Current Taxation Laws result in Double taxation

The gaming platforms charge an amount, a total commission fee, and pool money, from the player. Out of this amount, some portion of this is returned to the player as a reward. For example, if this amount is Rs 25, and at the end of the game, the player is returned Rs 16 as a reward, and the rest of the money is kept by the company as commission for access to the gaming platform or cost of supply. As per section 15 (1)³¹ of the CGST Act, the value of supply of goods or services is the price paid or payable for the said supply of goods or services under the GST Act. Hence, the amount that is left with the gaming company after paying the rewards is the actual value of the supply of service, and on which a tax rate of 28% will be charged. This high tax rate is charged because Section 15 is read together with Rule 31A(3)³² of the CGST Rules of 2017. This results in huge amounts of tax liabilities on online gaming sites. However, it must be noted that fantasy sports have a different structure to that of other forms of offline actionable claims.

The IT department charges a tax on the amount of the winning, under Section 194B³³ and 115BB³⁴ of the Income-tax Act, 1961 from the user of the online gaming site. It is important to understand that the portion of the money, paid to place the bet and to pay commission fees is used by the online gaming site as the reward that is sent back to the winning players. This results in double taxation as when the authorities charge to tax under Rule 31A (3) of the CGST rules 2017, it is being charged from both the bet that is placed by the Player and the winnings of the player.

The Hon'ble apex court in the case of **Commissioner of Income Tax v. Damani Brothers**³⁵ held that “...There can be, no dispute that double levy of interest is not permissible. But this principle is applicable only when the interest is chargeable more than once for the same set of refractions. If the provisions under which interests are charged operate in different fields, there is no statutory bar on levying the interest because, in essence, it does not amount to double levy of interest but levy of interest separately for different refractions.”

³¹ Section 15 (1) reads “The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.”

³² This rule reads as “The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator.”

³³ If the winnings are greater than INR 10,000, the gaming company deducts TDS of any person at the same rate under **Section 194B of the Income Tax Act, 1960.**

³⁴ Winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever are taxable under the head of 'Income from other sources' under **section 115BB of the Income Tax Act, 1961.**

³⁵ 2002.

Indexed at **Manupatra**

From the above judgment, we can say that the authorities must charge tax under only one of these two heads - Section 115BB and 194B or under Rule 31A(3) to avoid double taxation.³⁶

Conclusion

The concept of fantasy sports is very new for India and there isn't much clarity on their structure of operation, hence, there is existing ambiguity which is created in the enforcement of law over which section shall tax be levied for such activities. Much more clarity is required on these taxation practices.

We would like to suggest the following recommendations to remove ambiguities from this Online Fantasy Gaming Industry:

- Games of skill should not be taxed as per gambling and betting. Relevant changes should be made to the Central Goods and Service Tax Act 2017 ("CGST Act") to solve this issue.³⁷
- The services provided by operators of games of skill should be treated as services related to "other online content" under the CGST Act.³⁸
- Law enforcement agencies, such as the police, should be trained on the tax regime and the latest legal developments for new digital technologies, including the gaming sector.³⁹
- **Section 2(24) of the Income Tax Act 1961** should be amended: A separate definition for income derived from games of skill should be added to the Income Tax Act 1961.⁴⁰

³⁶ <https://theguardian.com/taxing-fantasy-sports-in-india-a-grey-area-that-needs-clarity/> accessed on 25th August 2021.

³⁷ Entry 999692 of the Explanatory Notes which covers 'gambling and betting services including similar online service' should have the following language added: "This service code does not include services provided by operators of skill-based games, cf. 998439".

³⁸ Entry 998439 of the Explanatory Notes should be revised to include services provided by operators of skill-based games. The following words may be added after "...card games, children's games": "skill-based games, played on digital and offline platforms, including but not limited to fantasy sports, puzzles, card games".

³⁹ Model Police Manual, Volume 3, available at <https://bprd.nic.in/WriteReadData/userfiles/file/7933847300-volume%203.pdf> ; Tax Manual, Central Board of Direct Taxes, available at <https://www.incometaxindia.gov.in/pages/about-us/central-board-of-direct-taxation.aspx> accessed on 25th August 2021.

⁴⁰ For definition of game of skill, see *Wedges/Ledges of California v. City of Phoenix*, 24 F.3d 56, 63 (9th Cir. 1994). Alternatively, the UK VAT legislation defines games of chance to mean pure chance, such as dice or roulette, where the result cannot be influenced by the player .

Indexed at **Manupatra**

- **Section 115BB of the Income Tax Act 1961**, should be amended: Income derived from games of skill should attract a much-reduced rate of tax on the winnings than earned by an assessee from a game of chance.⁴¹
- **Section 58 (4) of the Income Tax Act 1961** should be amended to specify that deductions and set-offs are allowed for winnings from games of skill.⁴²



⁴¹ Section 115BB should be amended to provide a reduced rate of taxation from the 31.2% that is the current rate for all games under Section 2(24)(ix)

⁴²Section 58(4) of the Income Tax Act, 1960 should be removed. Alternatively, a provision can be added to Section 58(4), clarifying that it would not be applicable to income derived from skill-based games.