Skill or Sin? The Tax Twist in India’s Gaming Laws

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Section 115BB of the Income-tax Act, 1961 (**“IT Act”**) was introduced by the Finance Act, 1972, to tax casual and non-recurring incomes such as winnings from lotteries, crossword puzzles, card games, betting and gambling along with the obligation to withhold tax under Section 194B of the IT Act. The primary objective was to bring within the tax net occasional windfall gains rather than regular income arising from a profession or business. This ensured that individuals earning income from occasional windfall gains are taxed at the flat rate of 30%.

Building on this framework, the Finance Act, 2023, introduced Section 115BBJ and Section 194BA of the IT Act to specifically tax winnings from online games at a flat rate of 30%. However, the term “online game” has been generically defined to mean - a game that is offered on the internet and is accessible by a user through a computer resource including any telecommunication device. Thus, on a plain reading, under the new regime all online games de hors their nature viz. “game of skill” vs. “game of chance”[1] and the category of income viz. “casual and non-recurring income” vs. “professional and recurring income”[2] are put in the same bucket.

The legal issue which requires consideration is whether merely on change of mode of playing game (online vs. offline) the nature of income become distinct and would require separate treatment for taxability.

Recently, the Government introduced the Promotion and Regulation of Online Gaming Act, 2025 **(“PROG Act”**) and the Promotion and Regulation of Online Gaming Rules, 2025 (**“PROG Rules”**), establishing a comprehensive regulatory framework for online gaming in India. The PROG Act specifically creates a distinction between a “online game” and “e-sports” and lay down detailed guidelines conferring power on the Central Government to recognise and register e-sports with the Authority or agency, as the case may be, as a legitimate form of competitive sport in India and to promote and develop e-sports. Further, National Sports Governance Act, 2025 has also been enacted to recognise the e-sports.

It is pertinent to note that whilst inserting section 115BBJ, parallel amendment was made by insertion of proviso to Sections 115BB of the IT Act, which provides that w.e.f. 01.04.2024 provisions of section 115BB shall not be applicable on income by way of winning from any online game. On a conjoint reading of section 115BB and section 115BBJ of the IT Act, it may be argued that the taxable event under the new regime ought to cover only the casual and non-recurring income. Thus, on a purposive interpretation of the term “online game” under the PROG Act read with IT Act, it may be argued that the legislature in its wisdom has carved a distinction between “online game” and “e-sports” and thus, the provision of section 115BBJ of the IT Act are not applicable on e-sports.

Alternatively, it may also be argued that the legislative evolution reflects a continuity of intent, viz. treating casual winnings as a distinct class of taxable income, separate from earnings derived through regular or professional skill-based activities. Consequently, it may be argued that the professional gamers or individuals deriving consistent income from games of skill / e-sports be taxed under the head “Profits and Gains from Business or Profession” and be given similar treatment even under the new regime.

It is a well-recognised principle that in dealing with matters of interpretation, subsequent legislation may be looked at in order to see what is the proper interpretation to be put upon the earlier Act, where the earlier Act is obscure or ambiguous or readily capable of more than one interpretation.[3]

To conclude, while the government’s intent to regulate online gaming is understandable, the current approach under the IT Act may go too far if, the online game of skill / e-sports are taxed in the same category as “gambling or betting” at the rate of 30%. This creates an uneven and somewhat outdated distinction that doesn’t reflect how people engage with technology today. Thus, much needed clarity is required, as online skill-based games / e-sports should not fall within the same category as “gambling or betting” on multiple constitutional grounds under Articles 14 and 19 of the Constitution of India, given that they mirror lawful offline pursuits.

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[1] State of Bombay vs R.M.D. Chamarbaugwala: AIR 1957 SC 699; State of Andhra Pradesh vs K. Satyanarayana: AIR 1968 SC 825; Dr. K.R. Lakshmanan vs State of Tamil Nadu: [TS-5007-SC-1996-O]

[2] Royal Western India Turf Club Ltd. vs ACIT: [TS-7193-ITAT-2019(Mumbai)-O]

[3] DIT vs Mitsubishi Corporation: [TS-5066-SC-2021-O]