Finance Bill: Crypto losses can't be set off against gains

No tax hikes; bet on multiplier effect with capex push: Finance Minister

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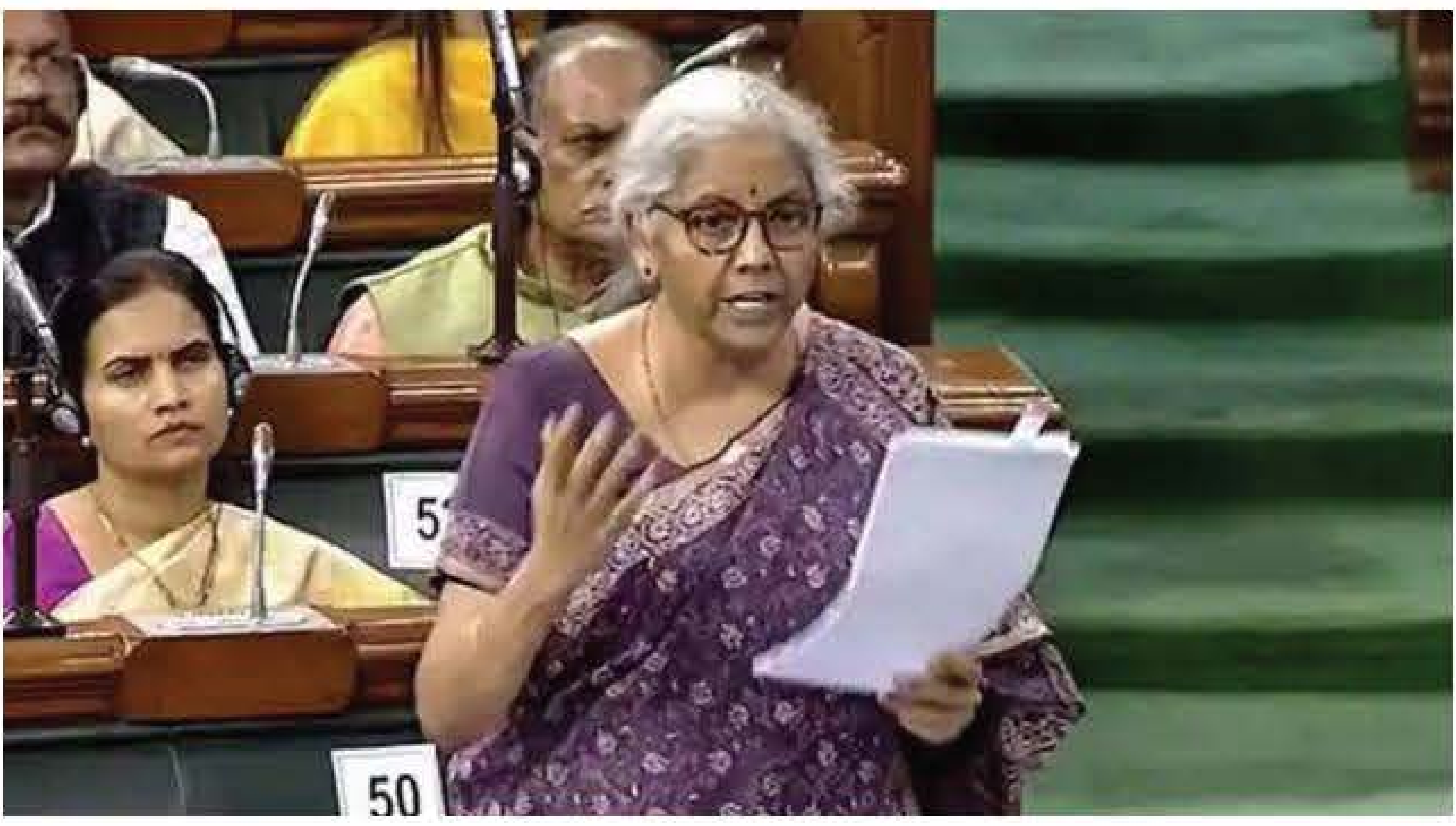

Finance Minister Nirmala Sitharaman in Lok Sabha. PTI

The Lok Sabha on Friday approved the Finance Bill, 2022 after accepting 39 official amendments moved by Finance Minister Nirmala Sitharaman. The approval completes the Budgetary process for the next financial year.

Key amendments to the Finance Bill include clarification on taxation aspects for cryptocurrencies or virtual digital assets (VDAs) and deductions of surcharge and cess. Loss from the transfer of virtual digital assets will not be allowed to be set off against the income arising from the transfer of another VDA in the proposed amendments. Replying to a discussion on the Finance Bill, Sitharaman said India was probably the only country that did not resort to new taxes whereas as many as 32 countries have increased the tax rates after the pandemic (as per an OECD report). "Instead, we put more money where multiplier effect would be maximum," she said. The Budget raised capex by 35.4 per cent for the next year to Rs 7.5 lakh crore in expectation that it would lead to an investment-led demand revival in the economy.

The government will define virtual digital assets with a view to levy 30 per cent tax on income from all transfers of such assets. Section 115BBH was introduced in the Finance Bill, 2022 to inter alia tax transfer of VDAs. However, the meaning of the phrase "transfer" was unclear as the definition of the term provided under Section 2(47) applied only in relation to capital assets. The amendment now seeks to clear the ambiguity by inserting a sub-section which applied the 2(47) definition to transfer of VDAs irrespective of whether they are construed as capital assets or not.

Also, with the amendments, deduction of surcharge and cess, which has been claimed and allowed to the taxpayer, will be deemed to be under-reported income and will attract a 50 percent penalty. Making a retrospective amendment to the Income-tax Act from 2005-06, the Finance Bill 2022 had proposed a retrospective disallowance of deduction for surcharge or cess under Section 40(a) (ii) with effect from AY2005-06. Citing some court rulings that had given benefit to taxpayers in claiming cess as expenditure and not tax, the tax department said the retrospective amendment is being done to correct the anomaly.

"... An amendment has been proposed in the Finance Bill, 2022 which has the effect of providing that deduction of surcharge or cess which has been claimed and allowed to the taxpayer will be deemed to be under-reported income and thus be subjected to a 50 percent penalty. It seems that pending claims in appeals may not be subject to penalty as they have not been allowed to the taxpayers yet," Sandeep Jhunjhunwala, partner, Nangia Andersen LLP said.