

FBC2

Roll No.

Total No. of Printed Pages – 15

Total No. of Questions – 6

Maximum Marks – 70

GENERAL INSTRUCTIONS TO CANDIDATES

1. The question paper comprises two parts, Part I and Part II.
2. Part I comprises Multiple Choice Questions (MCQs).
3. Part II comprises questions which require descriptive type answers.
4. Ensure that you receive the question paper relating to both the parts. If you have not received both, bring it to the notice of the invigilator.
5. Answers to MCQs in Part I are to be marked on the OMR answer sheet as given on the cover page of descriptive answer book only. Answers to questions in Part II are to be written in the same descriptive answer book. Answers to MCQs, if written inside the descriptive answer book, will not be evaluated.
6. OMR answer sheet given on the cover page of descriptive answer book will be in English only for all candidates, including for Hindi medium candidates.
7. **The bar coded sticker provided in the attendance register, is to be affixed only on the descriptive answer book.**
8. You will be allowed to leave the examination hall only after the conclusion of the exam. If you have completed the paper before time, remain in your seat till the conclusion of the exam.
9. Duration of the examination is 3 hours. You will be required to submit (a) Part I of the question paper containing MCQs, and (b) the answer book in respect of descriptive answer book with OMR cover page to the invigilator before leaving the exam hall, after the conclusion of the exam.
10. The invigilator will give you acknowledgement on Page 2 of the admit card, upon receipt of the above-mentioned items.
11. Candidate found copying or receiving or giving any help or defying instructions of the invigilators will be expelled from the examination and will also be liable for further punitive action.

PART – II

70 Marks

1. Question paper comprises 6 questions. Answer Question No. 1 which is compulsory and any 4 out of the remaining 5 questions.
2. Working notes should form part of the answer.
3. Answers to the questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate has not opted for Hindi Medium, his/her answers in Hindi will not be evaluated.
4. All questions relate to Assessment Year 2023-24 unless stated otherwise in the questions.



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PART – II

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1. X Ltd. is engaged in the manufacture and sale of textiles goods. Its net profit for the year ending March 31, 2023 after debit/ credit of the following items to the profit and loss account was ₹ 1,25,00,000.

- (i) Advertisement expenditure includes a sum of ₹ 1.60 lakhs paid in cash to sister concern of a director of the company. The Fair market value of such expenditure in the market is ₹ 52,000.
- (ii) Repairs of plant and machinery include ₹ 1.80 lakhs towards replacement of worn out parts of machineries.
- (iii) The company used to include interest cost in valuation of its finished stock upto the financial year 2021-22. During the financial year 2022-23, the company changed its accounting policy to comply with the requirements of accounting standard issued by the ICAI and excluded interest cost in valuation of finished stock. This has resulted in a decrease in the current year's profit by ₹ 10.70 lakhs.
- (iv) An executive Mr. Q, while on business trip abroad, died and the company voluntarily paid gratuity to his family amounted to ₹ 2.00 lakhs.
- (v) Capital Expenditure of ₹ 1.80 Lakhs incurred for the purpose of promoting family planning amongst its employees debited in the Profit and Loss account.
- (vi) Retrenchment compensation paid to employees of one of the unit of the company which was closed down during the year amounted to ₹ 14 lakhs.
- (vii) ₹ 4 lakhs, being amounts waived by a co-operative bank out of principal and ₹ 1 lakh being amount waived by the bank on arrears of interest, respectively, in one-time settlement. The loan was obtained for meeting working capital requirement four years back.

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- (viii) Contribution towards Employees' pension scheme notified by the Central Government u/s 80 CCD for a sum of ₹ 3 lakhs calculated at 12% of basic salary and Dearness Allowance (forming part of retirement benefits) payable to the employees.
- (ix) Marked to market loss amounting to ₹ 6 lakhs in respect of an unsettled derivative contract. The contract was settled in May, 2023 with a gain of ₹ 1 lakh.
- (x) Provision for gratuity based on actuarial valuation was ₹ 4 lakhs. Actual gratuity paid debited to gratuity provision account was ₹ 2.75 lakhs. The gratuity paid to Mr. Q is debited separately and not included in Provision for gratuity or Actual gratuity paid mentioned here.

The company furnishes following additional information relating to it:

- (i) The company has obtained a loan of ₹ 4 lakhs from ABC Private Limited in which it holds 16% voting rights. The accumulated profit of ABC Private Limited on the date of receipt of loan was ₹ 1 lakh.
- (ii) The company has given I phone Mobile sets to 5 distributors as incentive costing ₹ 60,000 each on 28.10.2022 on the occasion of Diwali. The accountant of the company debited the same amount to Business Promotion Expenses, being business expenditure and did not deduct any Tax at source.
- (iii) The company during the financial year 2022-23 has contributed a sum of ₹ 3,50,000 to an Approved Electoral trust by an RTGS directly to the account of the Trust.

You are required to compute the Total Income of X Ltd. for the assessment year 2023-24 assuming that the company has not opted for Section 115BAA/115BAB under the Income Tax Act, 1961.

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2. (a) (i) Mr. A, aged 34 years, is a salaried employee with TKM Limited. He has furnished the following details for the previous year 2022-23 :

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Sr. No.	Particulars	Amount in ₹
1.	Gross Salary	23,00,000
2.	Business Loss from a New part time business of Trading in Mobiles	(4,50,000)
3.	Short Term Capital Loss on sale of Property (computed)	(3,60,000)
4.	Mr. A purchased 1000 Bibcoins, a virtual digital currency on 01.04.2022 for ₹ 1,000 per coin, which he sold on 15.02.2023 for ₹ 1,300 per coin. Commission for transfer of Bibcoins is 2% of the sale value.	

You are required to compute the Total Income of Mr. A, assuming that he has not opted for Section 115BAC for the Assessment year 2023-24 as per the provisions of the Income Tax Act, 1961.

- (ii) L, M and N are three partners of M/s. L & G Associates, a partnership firm established on 01.04.1995. L retires from the firm on July 27, 2022 and after his retirement, business of the firm will be operated by M and N. Capital account balance of L as on July 27, 2022 is ₹ 20 Lakhs, (there is no revaluation of assets in books of the firm at any time after 2003-04 when L joined the firm as a partner).

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The firm gives to L the following to settle his account:-

- (i) Cash payment of ₹ 1,00,000

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(ii) Stock in trade (Fair market value on July 27, 2022 is ₹ 2,00,000).

This stock was purchased on April 15, 2022 for ₹ 1,20,000.

(iii) Plot of Land at Kota (Fair market value of plot as on July 27, 2022 is ₹ 17,00,000)

Book value of plot is ₹ 17,00,000. It was acquired during 1998-99 for ₹ 60,000. Fair market value of the plot as on April 1, 2001 is ₹ 1,10,000.

You are required to calculate the Taxable Income as per the provisions of Income Tax Act, 1961 for L & G Associates for A.Y. 2023-24.

Cost Inflation index for F.Y. 2022-23 is 331 and for F.Y. 2001-02 is 100.

(b) M/s ABC Inc., a company incorporated in Korea, entered into an agreement with XYZ Ltd., an Indian company, for providing assistance to the latter in setting-up a power plant in Gujarat. The scope of work includes

- (i) offshore services in the nature of drawing and design of Electrical and networking work; and
- (ii) onshore services in respect of installation of such machinery.

The consideration for aforesaid scope of work was agreed to be ₹ 3 crores for offshore services and ₹ 2 crores for onshore services. The consideration was discharged as under -

- ₹ 3 crores, in respect of offshore services, was paid in ABC's bank account in Korea on 1st July 2022;
- 6% debentures for ₹ 2 crores were issued on 1st September, 2022 in consideration for onshore services.

Discuss tax implications in India in respect of above transactions in the hands of M/s ABC Inc. under the provisions of the Act for AY. 2023-24. For the purpose of your answer, you may assume that activities of ABC Inc. do not constitute any business connection in India.

Ignore the provisions of tax treaty and DTAA.

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3. (a) (i) A public company, has created a charitable trust exclusively for the benefit of the public. The trust has granted interest free loans inter-alia to some of the company's employees in order to enable their children to pursue higher studies, as per the objects of the trust. The Assessing Officer considers this benefit as being covered under section 13(3) and proposes to withdraw the exemption from tax granted to the trust. Comment upon the correctness or otherwise of the view of the Assessing Officer. 4×2

- (ii) Leeladhar Memorial Trust runs an educational institution, which is engaged solely in education, received annual receipts during F.Y. 2022-23 amounting to ₹ 2.40 crores. The trust also runs a hospital for treatment of persons suffering from mental defectiveness solely for philanthropic purposes. The total receipts for the hospital during F.Y. 2022-23 amounting to ₹ 2.50 crores.

Leeladhar Memorial Trust is not registered under Income Tax Act for Tax exemption u/s. 11, 12 or any other such clause. The consultant of the trust told them they are not required to pay any tax even not given Registration under the Act. Examine the consultants' view discussing the relevant provisions of Income Tax Act, 1961.

- (b) Mr. Rizvi, an Indian resident, aged 35 years, works in the Welly Oilfields, Country S as a Superintendent in charge at an emolument of AED 9,500 per month. In order to look after his ailing mother residing in Mumbai, India, he shifted with his family on 1st July, 2022 and started his consultancy business in India. Before shifting to India, he let out his house property in Country S @ 3,250 AED from the same month. The details of his income in INR for the year ended 31st March, 2023 are as follows; 6

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Profit from the consultancy business	₹ 8,65,000
Fixed Deposit interest from the bank of Country S	₹ 45,500
Savings bank interest from SBI, Mumbai	₹ 18,250
Dividend income from XYZ Ltd, an Indian company	₹ 7,750

Rate of income tax in Country S is 23%.

During the previous year, Mr. Rizvi paid ₹ 48,000 as medical insurance premium for himself and ₹ 60,000 as medical insurance premium to insure the health of his father, a non-resident aged 66 years, who is not dependent on him.

You are required to compute the total income and tax liability of Mr. Rizvi for assessment year 2023-24 assuming that India has not entered into double taxation avoidance agreement with Country S and he has not opted for the provisions of Section 115 BAC. You may consider (1 AED = 23 INR)

4. (a) (i) During the previous year 2022-23, Mr. A purchased scrap of ₹ 55 lakhs from Mr. B for the purpose of his manufacturing unit. Mr. A also furnished a certificate to Mr. B that the scrap shall be utilized for manufacturing process carried on by Mr. A and shall not be used for trading purposes. Mr. A made the payment of ₹ 45 lakhs during F.Y 2022-23 to Mr. B. Assume turnover of both Mr. A and Mr. B from the business carried on by them exceeds ₹ 10 crores in the financial year 2021-22. Comment upon TDS/ TCS implication in the above case. 3
- (ii) Mr. P provides technical consultancy to its various clients who deduct tax u/s 194-J of the Act. Mr. P applies for lower tax deduction certificate u/s 197 from the TDS officer in respect of his receipts from consultancy. During the previous year 2022-23, Mr. P was issued the lower tax deduction certificate allowing him to receive the consultancy 3

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payments after deduction of tax @ 1%. Mr. P forwarded this certificate to his client Mr. Q asking him to deduct tax @ 1% on the payments of ₹ 15 lakhs to be made to Mr. P.

Mr. Q has approached you to advise on the amount of tax to be deducted from the payment to be made to Mr. P. You gathered the information that Mr. P is not filing his ITRs for the last two Assessment years and TDS credit in his 26AS is more than ₹ 1 lakh in each last two years i.e. A.Y. 2021-22 and 2022-23. What would be your advice to Mr. Q ?

- (iii) Ms. Roshni sold her house property at Delhi to Ms. Shalini for a consideration of ₹ 60 Lakhs on 1.8.2022. She has purchased the house property on 1.4.2015 for ₹ 36 lakhs. The Stamp duty value of the property on the date of sale i.e. 1.8.2022 is ₹ 82 Lakhs.

Determine the TDS implications in the hands of Ms. Shalini as per Income Tax Act assuming both Roshni and Shalini are resident individuals.

- (b) Shahi Pvt. Ltd., a domestic company, located in Special Economic Zone (SEZ) since November 2013.

The company is engaged in manufacturing of consumables goods. The manufacturing is wholly dependent on raw material which is imported from Sumi Inc. of Japan.

The following details are furnished in respect of the financial year 2022-23:

- (i) Shahi Pvt. Ltd. imported goods for ₹ 30 crores from Sumi Inc.
- (ii) Sumi Inc. supplied similar raw materials to unrelated parties with a mark-up of 10%, whereas for Shahi Pvt. Ltd. it earned a mark-up of 20%.

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- (iii) Shahi Pvt. Ltd. was allowed to use the brand name of Sumi Inc. without any payment and whereas the unrelated parties cannot use such brand name in India. The annual cost of brand value is ₹ 90 lakhs.
- (iv) The Assessing Officer referred the matter to the Transfer Pricing Officer (TPO) for determination of Arm's Length Price (ALP).

You are required to answer the following:

- (a) Compute the arm's length price of the transaction and adjustments to be made to the income of Shahi Pvt. Ltd while discussing the relevant provisions.
- (b) If Transfer Pricing Officer (TPO) had enhanced the income of Shahi Pvt. Ltd. by ₹ 2 crores, will that enhanced amount of income be eligible for deduction under Section 10AA?
- (c) Will Shahi Pvt. Ltd. become liable for penalty for under-reporting of income based on the report of the Transfer Pricing Officer (TPO) ?

5. (a) Answer any **two** out of the following **three** sub-parts, viz. (i), (ii) and (iii). **4×2**

Your answer should cover :

- (a) Issue involved
- (b) Provisions applicable
- (c) Analysis and Conclusion
- (i) M/s Risky Construction Pvt. Ltd. is engaged in the construction of bridges and flyovers. During the previous year 2022-23, it made payment to various parties and deducted tax amounting to ₹ 1.60 crores. However, the company failed to deposit the said amount with the income-tax department within the time prescribed under the Act. The company submitted that it is facing financial hardship since a large sum of money has been struck-up with its debtors and also with

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the income-tax department in the form of tax refunds. It is further submitted that inspite of financial crisis, the company has suo-moto deposited the TDS amount along-with interest u/s 201(1 A) of the Act, before receiving any notice from the income-tax department in this regard. However, Tax officer initiated prosecution proceedings under Section 276 B of the Act against the company and its directors. The company has approached you to advise in the matter.

- (ii) XYZ Limited entered into a contract for purchase of software with M/s. Delta Inc, a non-resident company based in Sweden . It filed an application under Section 195(2) before the Assessing Officer to make payment to the Non-resident company for purchase of software without deducting tax at source.

The assessee XYZ Limited contended that said non-resident company had no Permanent Establishment in India and in terms of the DTAA between India and Sweden, no tax was to be deducted in India on same. The AO rejected the assessee's application on grounds that consideration for software licensing constituted royalty under Section 9(1)(vi) and was liable to be taxed in India and , accordingly, assessee was directed to deduct tax at source at rate of 10 percent on said royalty payment.

On Appeal, the Commissioner (Appeals) passed an order in favour of the assessee.

On further appeal, the Tribunal upheld the order passed by the Assessing Officer on grounds that payments made for purchase of software were in nature of royalty and tax at source to be deducted on such payment.

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The assessee company filed a miscellaneous application for rectification under Section 254(2) before the Tribunal. The assessee had also filed an appeal before the High Court.

Tribunal allowed said application in exercise of his powers under Section 254(2) and reheard entire appeal on merits and recalled its original order and passed an order in favour the assessee. Thereafter the writ petition filed by the assessee with High Court was also withdrawn.

Is Tribunal justified in recalling its original order? Please state your answer on the basis of latest provisions of the Act and Supreme Court rulings.

- (iii) The assessee MPV Ltd, being a branch office of US Company, MPV Inc, was engaged in contract research activities and cultivation of parent seeds in India. It had been claiming exemption by treating its entire income as agricultural income.

On Scrutiny assessment for the period from year 2010 to 2015, the Assessing Officer treated entire income of the assessee as "Business Income" and attributed deemed income from research activity holding the assessee company to be a Permanent Establishment (PE) of MPV Inc. However the assessee company disputed the matter for resolution under Mutual Agreement Procedure (MAP) under the DTAA agreement between India and USA. The MAP was culminated in the year 2020. The assessment was finalized and taxes alongwith interest were paid by the assessee under Section 220.

However, the assessee disputed the amount of interest u/s.220(2) for the period from 2015 to 2020.

Thereafter the assessee company filed an application before Jurisdictional Commissioner of Income Tax under section 220(2A) for waiver of interest levied u/s.220(2). Commissioner dismissed application of the assessee.

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The assessee company is a part of MPV Inc, a global conglomerate which had in 2020 ₹ 94,000 crores in net sales and ₹ 12,000 crores as operating profit. The amount paid by it towards interest u/s.220(2) of the Act was 2.50 crores.

On the basis of the above facts and as per the latest ruling of the Supreme Court, whether the Commissioner of Income Tax is justified in rejecting the claim of Assessee or not.

- (b) Kiwi Inc., a company based in USA, is engaged in manufacturing and selling of mobile phones, globally. It sells each mobile phone for USD 2,000. Alpha Inc., another company based in USA, owns and manages a website which acts as a marketplace for buying and selling of goods and also hosts advertisements. Gama LLC, a company incorporated in UK, is engaged in manufacturing and selling of printers. During the previous year 2022-23, Kiwi Inc. sold 80,000 mobile phones, as under –

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Platform through which the mobile phones are sold	Customer to whom the mobile phones are sold	Number of mobile phones sold
Through Alpha Inc.	Persons who are resident in India	15,000
Through Alpha Inc.	Persons who are not resident in India, sitting in U.K.	25,000
Through Kiwi Inc.'s own website	Persons who are resident in India	7,000
Through Kiwi Inc.'s own website	Persons who are not resident in India, using Internet in U.K.	12,000
Through Kiwi Inc.'s physical store in US	Persons who are resident in India	21,000
Total		80,000

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Gama LLC enters into a contract with Alpha Inc. for publishing its advertisement on the website of Alpha Inc., for the period from 1st March 2023 to 31st March 2023. Gama LLC paid USD 50,000 for hosting advertisement in India for Indian customers and USD 20,000 for hosting advertisement in UK for UK customers. Kiwi Inc., Alpha Inc. and Gama LLC do not have any Permanent Establishment in India.

Discuss the India tax implications in the above scenario as per Income Tax Act, 1961. You may assume that sale of mobile phones was evenly distributed throughout the year and the rate of 1 USD is equal to ₹ 80.

6. (a) (i) Comment whether the following transactions, undertaken during the financial year 2022-23, are required to be reported under the Statement of Financial Transaction or Reportable Account as required u/s 285 BA of the Income Tax Act, 1961. Please give your answer along with suitable reasons and Category of Reporting Person.

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- (a) Mr. A purchased five bank drafts of ₹ 3 lakh each from his current A/c with State Bank of India, Jaipur;
- (b) Ms. Q made two time deposits with Canara Bank, Jaipur - (a) a time deposit of ₹ 7 lakhs made on 07-08-2022 and (b) Renewal of Time deposit of ₹ 5 lakhs originally made on 1.1.2022 and renewed on 1.1.2023;
- (c) Ms. C made following payments in respect of credit card payments –

• For the months of April to July, 2022	–	₹ 19,500 for each month, in cash
• For the months of Aug. to Dec., 2022	–	₹ 59,500 for each month, through bank A/c
• For the months of Jan to Mar, 2023	–	₹ 13,300 for each month, in cash

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(d) Mr. Z purchased garments of ₹ 2 lakhs in cash from M/s Arora Designers on the occasion of his marriage. M/s Arora Designers is liable for audit u/s 44AB of the Income Tax Act.

(ii) Doctrine of precedence would be applicable in case of tax laws. In light of the Doctrine of Precedence, Comment on the correctness or otherwise of the following statements along-with reasons for your answers: -

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- (a) The ratio *decendi* (the rationale for deciding a case) of a Supreme Court decision is absolutely binding on all lower courts, Tribunals and authorities. However, the lower courts, Tribunals and authorities are not bound by the *obiter dicta* (additional remarks or things said by the way) of Supreme Court decisions.
- (b) Where there are two irreconcilable decisions of two Benches of similar strength of the Supreme Court, the decision with more detailed discussion on the subject shall prevail.
- (c) Lower courts are bound by the decisions of Supreme Court. The only exception to this principle is the judgments passed by the Supreme Court *per incuriam* (i.e. without referring the statutory provision).
- (d) Lower authorities may deviate from the decision of the High Court within whose jurisdiction they function, only in a situation to keep the issue alive where the Department has not accepted the said decision and has taken the matter to the Supreme Court.

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| (b) (i) | What is the "General Rule of Interpretation" of tax treaty as provided under Vienna Convention on Law of Treaties ? | 2 |
| (ii) | Explain the following terms "Pacta Sunt Servanda" (in good faith) in view of the Principles enunciated in the Vienna Convention on law of treaties. | 1 |
| (iii) | Explain the term "Mutual Agreement Procedure" as per Article 25 of Model Tax Conventions under OECD model and UN Model. | 3 |

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