Hon’ble ITAT Bench New Delhi held that if the software itself is not taxable in India Under India-UK DTAA, the training and the related activities connected to the utilization and installation of software cannot be held taxable as FTS, on the basis of mere use of “make available” in agreement.

TSYS Card Tech Ltd Versus DCIT [TS-36-ITAT-2023(DEL)]

New Delhi, January 27, 2023

In the present case, the assessee, a foreign company was providing information technology-related services to the Indian Company.

The assessee had earned revenue from Indian customers primarily from providing the software license, and secondly from training programmes and updations in connection with the software

The assessing officer imposed the tax on the income of the assessee which was received from the training programme and updates services connected with the software under the head FTS (Fees for the technical services) under Article 13 of India-UK DTAA.

The Hon’ble ITAT held that the mere use of work ‘make available’ in the agreement is not sufficient to impose the tax under the head FTS as per article 13 of the Indian-UK DTAA. And if the software itself is not taxable so training and updates related services related to software cannot be held FTS, hence the Hon’ble Tribunal delete the addition.

**DTAA Double Taxation Avoidance Agreement*
**Article 13 of India-UK DTAA: - provision for imposing the tax on the income received as fees for technical services by the state were income accrued.*

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