



TC01332

Appeal number: TC/2011/00852

Appeal against a penalty imposed for the late submission of the Appellant's P35 for tax year 2009/10 – appeal dismissed – Appellant had no reasonable excuse

FIRST-TIER TRIBUNAL

TAX

**WORTH IT MANAGEMENT
(HARI CONSULTING LIMITED)**

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: S.M.G.RADFORD (TRIBUNAL JUDGE)

The Tribunal determined the appeal on on 20 April 2011 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 30 January 2011 and HMRC's Statement of Case submitted on 23 February 2011.

DECISION

1. This is an appeal by Hari Consultancy on behalf of the Appellant Worth It Management against the penalty of £500 imposed under Section 98A(2)(a) of the Taxes Management Act (“TMA”) for the late submission of the 2009/10 P35 return.

Background and Facts

2. The filing date for the P35 was on 19 May 2010. The return was filed online on 14 October 2010.
3. On 27 September 2010 a first interim penalty notice for a penalty of £400 was issued.
4. This was calculated for the four months from 20 May 2010 to 19 September 2010.
5. On 21 October 2010 a final interim penalty notice for £100 was issued for the period 20 September 2010 to 14 October 2010 was issued.
6. On 16 December 2010 the agent requested a review of the decision stating that the P35 submission was held up due to an HMRC system glitch.
7. On 20 January 2011 HMRC issued the conclusion of the review upholding the original decision imposing the penalties.

Appellant’s submissions

8. The agent, Hari Consultancy Ltd, on behalf of the Appellant contended that it had tried to submit the return prior to 19 May 2010 but the return was rejected with an error code.
9. The agent was advised by HMRC Online Services to try the submission the next day because of some technical issues.
10. The agent admitted that they failed to do so as a result of an oversight and made no further attempt to submit the P35 return until 14 October 2010.
11. The agents contended that they were surprised to receive the penalty notification out of the blue without any prior warning after some four months had passed.
12. The agent submitted that one of their other clients with similar problems had had their penalties cancelled and that they had enclosed the relevant details in their letter requesting a review.

HMRC’s Submissions

13. HMRC contended that under Section 73 OF THE Income Tax (PAYE) Regulations 2003 and paragraph 22 of Schedule 4 of the Social Security

(Contributions) Regulations 2001 the employer has a duty to make the end of the year returns by the due date of 19 May.

14. When a person appeals against a penalty they are required to have reasonable excuse which existed for the whole period of the default.

5 15. The fact that the return was late was not in dispute because the agent had accepted this.

16. There is no statutory timetable which HMRC have to follow when issuing reminders. It was standard for a first penalty notice to be issued when the P35 had not been received by 19 September following the filing date.

10 17. HMRC submitted that they were unable to comment on any other cases and if the agent was unhappy with the service then they should refer the matter to the HMRC complaints department.

Findings

15 18. The Tribunal found that there was no reasonable excuse for the late submission of the return. By the agent's own admission this was due to an oversight on their behalf following their failure to make a successful submission at their first attempt.

Decision

19. The appeal is dismissed and the penalties are hereby confirmed.

20 20. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.



30 **TRIBUNAL JUDGE**
RELEASE DATE: 18 JULY 2011

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