



TC01428

Appeal number:TC/2010/05029

Appeal against fixed penalty for late filing of partnership return – HMRC had given permission for late filing of individual tax return of a partner – concession did not apply to partnership return – no reasonable excuse – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

CARNBROOK CONVENIENCE

Appellant

- and -

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

Respondents

TRIBUNAL: JUDITH POWELL (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 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 1 June 2010, and the Respondents' Statement of Case submitted on 23 July 2010.

DECISION

The appeal was dismissed.

- 5 1. This is an appeal against the first fixed penalty imposed for the late filing of the partnership tax return for the year ending 5 April 2009.
2. A notice to file the partnership tax return was issued on 6 April 2009. This fact is not disputed by the Appellant. The normal filing date was October 31 2009 for a paper return. The paper return was received on 26 November 2009 which is after
10 the normal filing date and a penalty notice was issued on 16 February 2010. The Appellant appeals against the penalty on the grounds that it had been given a time extension to submit the return and the penalty was filed within the extended time limit.
- 15 3. We looked at a letter written by Mrs Fanthorpe, an administrative assistant with HMRC, to the Appellant's agent Messrs Saleem and Co. That letter is headed "Mr R Chibber" and was dated 19 November 2009. In that letter Mrs Fanthorpe explained she was unable to accept "the enclosed tax return form" because the second partnership supplementary page was missing. Mrs Fanthorpe explained clearly in that letter that the paper filing deadline was 31 October and so it was
20 then too late to submit a correct paper form. Notwithstanding this she offered two alternatives. First, if the return was submitted in a paper form she was able to accept within fourteen days from the date of her letter she would not charge a late-filing penalty and alternatively the return could be filed online until the following 31 January. It is clear that the letter could not have been written in connection
25 with the partnership return since that return was not received by the Respondents until 26 November and there was no suggestion that the partnership return had been filed at an earlier date. The Respondents say that the letter concerned the personal tax return of Mr Chibber and we accept that this was the case.
- 30 4. The Appellant also refers to a letter dated 27 November 2009 entitled Star Groceries which gave an extended deadline for a paper return which omitted information concerning individual partner details. The letter entitled Star Groceries does not obviously relate to Carnbrook Convenience and there was no evidence of any link between it and that partnership.
- 35 5. There was no evidence that either the letter entitled Mr Chibber or the letter entitled Star Groceries concerned the partnership Carnbrook Convenience. The letter entitled Mr Chibber is, on the evidence before us, most unlikely to relate to the Carnbrook Convenience tax return. There is no evidence that the tax return for that partnership was submitted (even in an incorrect form) more than once and since the return under appeal was not received by the Respondents until 26
40 November 2009 it cannot have been the subject of discussion in a letter from them dated 19 November 2009. We conclude that the letter of 19 November 2009 and the extended time limit given for submission of the paper return which was the subject of that letter related to the individual tax return rather than to the partnership tax return for which no additional time was given for filing. We do

not see how the letter entitled Star Groceries relates to the return for Carnbrook Convenience and no evidence was given showing a connection.

- 5 6. The Tribunal may set aside the penalty if a reasonable excuse existed and the failure was rectified without unreasonable delay (Section 118(2) Taxes Management Act 1970). We do not find that the correspondence produced to us in which extended time limits were agreed related to Carnbrook Convenience. The agent employed to deal with these matters should have realised to what the HMRC letters and the concession offered in them referred. There may have been some reason for the failure to file correct returns for the taxpayers mentioned in the letters produced to us but the correspondence does not elaborate upon that and there was no further evidence given about the background to the correspondence and in particular there was no reason given why the return for Carnbrook Convenience was filed late (other than the submission that the correspondence to which we have referred covered that partnership which we find is not the case) and so we dismiss the appeal.
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- 20 7. 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.

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JUDITH POWELL

TRIBUNAL JUDGE

RELEASE DATE: 8 September 2011

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