



TC01549

Appeal number: TC/2011/04222

Tax – Late submission of Employer’s Return – Imposition of penalties – No reasonable excuse – Appeal Dismissed.

FIRST-TIER TRIBUNAL

TAX

WESTCANNON MEDIA LTD

Appellant

- and -

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

Respondents

TRIBUNAL: LADY MITTING (TRIBUNAL JUDGE)

The Tribunal determined the appeal on 5 October 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 3 June 2011 and HMRC’s Statement of Case submitted on 27 July 2011, no Reply from the Appellant having been received.

DECISION

1. The Appellant was appealing against penalties imposed for the late submission of its Employer's Annual Return for the tax year ending 5 April 2009. The return was issued to the Appellant on the 11 January 2009 and was posted to the address which the Respondents held for the Company namely Studio 3D Westpoint, 36-37 Warple Way, Acton, London W3 ORG. The return was due to be filed by 19 May 2009.

2. The Respondents did not receive the return and issued a reminder on 1st September 2009, again to the Westpoint Address. On 28 September 2009, the return still not having been received, the Respondents issued a first interim penalty notice of £400 for the period 20 May 2009 to 19 September 2009. A second interim penalty notice for £400 was issued on 25 January 2010 to cover the period 20 September 2009 to 19 January 2010. A third interim penalty notice of £400 was issued on 24 May 2010 to cover the period 20 January 2010 to 19 May 2010. All notices were sent to the Westpoint Address. The return was eventually received by the Respondents on 8 November 2010, some 538 days late. Neither the return itself, nor the reminder nor any of the penalty notices were returned to the Respondents as undelivered.

3. On 24 November 2010, the Appellant appealed against the penalties on the grounds that it had in fact posted the P35 back in April 2009. The Appellant was asked for proof of postage but no response was received and the appeal was dismissed. The Appellant by letter dated 30 March 2011 requested a review. The stated grounds of review were that the return had been submitted on time and further that not once did the Respondents send the company any notification that it had not been received. The Respondents, in their review, upheld the original decision.

4. In its appeal to the Tribunals Service, the grounds of appeal were stated to be that all taxes had been paid on time and the P35 was also posted on time and it was not until over a year later that it was brought to the Appellant's attention that it had not been received. By this time the Appellant no longer had proof of postage. Further, the Appellant maintained it had not received any of the penalty notifications which were posted to "my old address" rather than the correct address of 9 Yelverton Lodge.

5. The penalties were issued pursuant of section 98A Taxes Management Act 1970. To succeed in its appeal against the late filing penalties, the Appellant would have to show that it had a reasonable excuse for late filing or as in this case that in fact it was filed within time. In the absence of any evidence that the return was filed by the due date, the Tribunal cannot accept that it was and finds as a fact that it was not. There is no obligation upon the Respondents to issue reminders to employers but we accept that in this case a reminder was sent. Equally, the Appellant would have received the three penalty notices. All the correspondence referred to was sent to the Westpoint address which was the only address which the Respondents had on file between 8 October 2008 and 27 May 2010. Further, the Respondents submit, and this has not been challenged by the Appellant, that the Annual Return for the year ending 5 April 2010 was issued on 31 January 2010 to the Westpoint address and was complied with.

Further, the Respondents submitted a copy of an internet search dated 23 March 2010 showing the Westpoint address as the contact address for the Appellant.

5 6. The Tribunal concludes that the return was not submitted in time and that the Appellant has shown no reasonable excuse for its non return. The appeal is dismissed and the penalties confirmed.

10 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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TRIBUNAL JUDGE

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RELEASE DATE: 5 November 2011