



TC01573

Appeal number: TC/2011/04225

Partnership – Late submission of partnership Return – Was there a reasonable excuse – Yes.

FIRST-TIER TRIBUNAL

TAX

CANDLESTICK COMPANY

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 8 June 2011 and HMRC's Statement of Case submitted on 29 June 2011, the Appellant having filed no Reply.

DECISION

1. The Appellant is a partnership of Mr H Singh and Mr N Singh. On 6 April 2010, the partnership was served with a partnership return for period 2009/10. The filing
5 date for submission of the return was 31 October 2010 if done on paper or 31 January 2011 if filed on line. No return having been submitted, the Respondents issued a penalty on or a few days after 15 February 2011 in the sum of £100. A paper return was submitted to the Respondents on 2 March 2011.

2. The Appellant appeals against the imposition of the penalty, it being their case
10 first that they did not receive the partnership return and secondly they did not understand they were under an obligation to complete and return such a return. The Notice of Appeal states that the partners went to the Respondent's Leicester office in or around April 2010 to seek advice on their tax position given that this was their first
15 business trading as partners and they had only been going for some four months. It is maintained by the Appellant that the tax adviser whom they saw advised them to fill in their individual self-assessment forms but she did not advise them that they also had to fill in a partnership return.

3. Dealing firstly with the issue of whether or not the partnership return was received, I fully accept that it was sent out by the Respondents and was not returned.
20 However, post does go missing and I have no reason to doubt the Appellants when they say they did not receive it. I therefore am prepared to accept their evidence that it was not received and so find as a fact.

4. It appears to me that the two partners acted responsibly throughout. The Respondents do not challenge that this was a new partnership and neither is it
25 challenged that the partners visited the Leicester Tax Office. What they were advised, only they know. It is possible that they were missadvised. Equally, it is possible that they were correctly advised but misunderstood. However, I accept the submission which they make that they came away from that visit believing that provided they completed the partnership sheets in their individual self-assessment returns they
30 would have complied with their obligation. I stress that I am specifically not finding that there was any misdirection by the Commissioners but when considering a reasonable excuse, the important factor is the perception which the taxpayer came away with.

5. I understand that it is accepted that the two partners both completed their
35 individual self-assessment forms and both completed the partnership pages therein. My view that they acted reasonably and responsibly is enforced by the fact that a partnership return was submitted within days of their receiving the penalty notice. I take from this that until receipt of the penalty notice they believed that they had acted perfectly properly and that nothing more was expected of them. As soon as they
40 realised that a partnership return should have been submitted, they submitted it.

6. For all these reasons I find that the Appellant throughout the default period, did have a reasonable excuse for late submission of the partnership return. The appeal is therefore allowed.

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.

10

TRIBUNAL JUDGE

15

RELEASE DATE: 14 NOVEMBER 2011