



TC01984

Appeal number: TC/2011/08066

Income tax – partnership – penalties for late filing of return – whether reasonable excuse – no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**RASHID AHMAD
t/a THE LAUNDERETTE**

Appellant

- and -

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

Respondents

**TRIBUNAL: ANNE REDSTON (TRIBUNAL PRESIDING
MEMBER)**

The Tribunal determined the appeal on 20 February 2012 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 6 October 2011 (with enclosures), HMRC's Statement of Case submitted on 2 December 2011 (with enclosures) and the Appellant's Reply dated 30 December 2011, together with his further letter dated 3 January 2012 (with enclosures).

DECISION

1. This is an appeal against three £100 penalties charged on the partners in the Launderette partnership (“the partnership”), for late submission of the 2009-10 partnership return.
2. The Tribunal decided that the appeal was dismissed and confirmed the penalties of £100 on each of the partners.
3. A summary decision was issued to the parties on 12 March 2012. Under Rule 35(4) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, either party is entitled to ask for a full written findings of fact and reasons for the decision (a “full decision”). Mr Ahmad, the representative partner for the partnership, has asked for this full decision.

The issue in the case

4. There was no dispute that the partnership return was filed late. The issue in the case whether there was a reasonable excuse for the late filing.
5. HMRC initially rejected Mr Ahmad’s appeal on the basis that it was out of time, being received on 4 April 2011 when the penalty Notice was issued in February 2011. Later correspondence, together with HMRC’s submissions, imply (without specifically addressing the point) that the appeal has been accepted. The Tribunal has proceeded on that basis.

The representative partner

6. The partnership has three partners, Mr Rashid Ahmad, Mr S Hussein and Mrs T Inya-Fatima. Mr Ahmad is the representative partner.
7. Only the representative partner can appeal late filing penalties levied on other partners in the partnership, and such an appeal is a “composite appeal” on behalf of both the representative partner and the other two other partners.
8. This appeal is thus a composite appeal by Mr Ahmad against the £100 levied on himself and the £100 levied on the other two partners.

The law

9. HMRC are empowered to issue a partnership return to a partnership under Taxes Management Act 1970 (“TMA”) s 12AA(2) or (3).
10. TMA s 12AA(4)-(4B) give the normal due dates by which a partnership return must be filed:

- (4) In the case of a partnership which includes one or more individuals, a notice under subsection (2) or (3) above may specify different days depending

on whether a return in respect of a year of assessment (Year 1) is electronic or non-electronic.

(4A) The day specified for a non-electronic return must not be earlier than 31st October of Year 2.

5 (4B) The day specified for an electronic return must not be earlier than 31st January of Year 2.

11. TMA s 93A prescribes the penalties for late returns. So far as relevant to this case, they are as follows:

Failure to make partnership return

10 (1) This section applies where, in the case of a trade, profession or business carried on by two or more persons in partnership—

(a) a partner (the representative partner) has been required by a notice served under or for the purposes of section 12AA(2) or (3) of this Act to deliver any return, and

15 (b) he or a successor of his fails to comply with the notice.

(2) Each relevant partner shall be liable to a penalty which shall be £100.

12. TMA s 118(2) sets out the “reasonable excuse” defence for non-compliance with the filing deadline:

20 (2) For the purposes of this Act...where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased.

The evidence

25 13. The Tribunal was provided with the correspondence between the parties, and also with HMRC’s SA telephone conversation record with Mr Ahmad from 30 March 2009 to 29 July 2011, and their telephone call notes for the partnership for the period from 17 March 2011 to 13 May 2011.

The facts

30 14. On the basis of this evidence, I find the following facts

15. On 18 January 2010, HMRC sent back Mr Ahmad’s 2007-2008 self-assessment (“SA”) tax return because the partnership pages needed completing.

35 16. On 25 February 2010, the 2007-2008 SA return was “unlogged” by HMRC and again sent back to Mr Ahmad, as he had not included final figures in the partnership pages but had instead entered “to be agreed”.

17. On 6 April 2010, HMRC issued Mr Ahmad, as the representative partner, with a Notice to File the 2009-10 partnership return.

5 18. Mr Ahmad says he wrote asking for a 2009-10 paper partnership return by letter dated 26 April 2010. This is disputed by HMRC and I make findings of fact on this below.

19. On 29 July 2010, Mr Ahmad called HMRC and requested a 2009-2010 paper SA return for himself.

10 20. He also says that he repeatedly requested a paper return for the partnership by calling HMRC on the phone. This is again disputed by HMRC and my findings of fact are set out below.

21. Penalty notices for not submitting the partnership return by the due date were issued by HMRC a few days after 15 February 2011.

22. On 17 March 2011, Mr Ahmad called HMRC and requested a paper partnership return, which was issued by HMRC.

15 23. On 31 March 2011, HMRC received the partnership return.

The parties' submissions in outline

20 24. Mr Ahmad says that he could not file the return on time because HMRC only sent him a Notice to File and he needed a paper return because he was not good with computers. He submits that he has a reasonable excuse for the late filing because he requested a paper return in writing on 26 April 2010, and followed up this request in subsequent telephone calls; HMRC did not respond appropriately to these requests.

25 25. HMRC say that they never received the letter of 26 April 2010, that there were no phone calls requesting a paper partnership return until 17 March 2011, long after the 31 October 2010 deadline. They say that the partnership has no reasonable excuse and the penalties should be upheld.

Reasonable excuse

30 26. The legislation does not define a reasonable excuse. It has recently been held by this Tribunal that "an excuse is likely to be reasonable where the taxpayer acts in the same way as someone who seriously intends to honour their tax liabilities and obligations would act." *B&J Shopfitting Services v R&C Commrs* [2010] UKFTT 78 (TC) at [14].

27. It has also been held to be "a matter to be considered in the light of all the circumstances of the particular case" (*Rowland v HMRC* [2006] STC (SCD) 536). Although these decisions are not binding on me, they provide helpful guidance.

35 28. I consider both of Mr Ahmad's reasonable excuse grounds of appeal in turn.

The letter of 26 April 2010

Mr Ahmad's submissions

29. Mr Ahmad says that his letter of 26 April 2010 proves that he requested a paper partnership return. He provided the Tribunal with a copy of the letter.

5 30. At the top of the page Mr Ahmad sets out his SA reference number and his National Insurance number.

31. Under the heading "Tax Return 2008 and Tax Return 2009", the letter says:

10 "Please send any partnership sheets and notes which are still outstanding so that I could complete these sheets and return. These sheets are not available on the internet."

32. Under the heading "Tax Return 2010", the letter says:

"Please send paper copies of Tax Return, partnership sheets and all relevant notes. Please always send me all required returns, forms and relevant Notes on paper."

15 33. It concludes:

"I am not good at computer. Maybe because of my limited knowledge I cannot fill in some forms on the computer and submit. To me, these forms have got to be printed, filled in and sent by post. These forms cannot be filled in and filed on-line."

20 34. On 30 August 2011, Mr Ahmad wrote to HMRC and said "my computer broke down during third week of July 2011. I lost all the information in it. I have no paper copy of my correspondence to you." He asks HMRC to send him a copy of the letter dated 26 April 2010 together with two other letters, one dated 4 March 2011 and one dated 26 March 2011. Confusingly, another letter dated 27 August 2011 appears to refer to the letter of 30 August 2011, and complains that HMRC have failed to send him copies of the requested letters.

25 35. On 3 October 2011, Mr Ahmad wrote again to HMRC, saying that "I have repeatedly requested the HMRC...to please send me copies of my letters...I have not received copies of these letters." Despite that statement, he attached to this letter a copy of the 26 April 2010 letter.

HMRC submissions on the letter dated 26 April 2010

36. HMRC say that they did not receive the letter dated 26 April 2010 until it was sent to them on 3 October 2011.

35 37. Since Mr Ahmad requested a paper personal SA return on 29 July 2010, HMRC submit that "it would have been reasonable to expect that he would have referred to [the 26 April 2010 letter] when he contacted HMRC on 29 July to obtain a personal return, yet he did not."

Findings of fact on the letter of 26 April 2010

38. I deal first with HMRC's evidence and submissions. They say they have no record of the letter Mr Ahmad says he sent on 26 April 2010. They submit that had he sent this letter but not received a response, it would have been reasonable for him to ask again for a paper partnership return when he called HMRC on 29 July 2010.

39. However, unlike the call log provided by HMRC for Mr Ahmad's SA tax position (which covers the period from March 2009 to July 2011) but the call record for the partnership only covers the much shorter period from March to May 2011. No explanation has been provided to the Tribunal as to why only two months of call records have been provided.

40. Since it is reasonable to expect that a chaser question about the partnership return would have been filed by HMRC under the partnership reference and not under Mr Ahmad's personal reference and because HMRC's telephone records for the partnership appear to be incomplete, I am unable to base my findings on this evidence.

41. This does not mean, however, that I accept Mr Ahmad's submissions.

(1) I note that the 26 April 2010 letter is headed with Mr Ahmad's SA reference number, not the reference number for the partnership. On its face, it is therefore a letter about his SA return and not about the partnership return.

(2) The text of the letter refers not only to the 2009-10 return, but also to the earlier 2007-2008 and 2008-2009 returns, for which he requests "any partnership sheets and notes which are still outstanding."

(3) However, the HMRC call records show that by 26 April 2010 Mr Ahmad had already submitted his 2007-2008 return together with the partnership pages.

(4) I therefore find that Mr Ahmad is unlikely to have requested "any partnership sheets and notes which are still outstanding" for 2007-2008, as he had already completed these pages before 25 February 2010. The credibility of the letter is therefore undermined.

(5) Finally, no explanation was provided to the Tribunal as to how Mr Ahmad managed to attach a copy of the 26 April 2010 letter to that of 3 October 2011, given that (a) he had lost all his computer records, (b) he had not retained a paper copy and (c) HMRC say they did not receive the 26 April 2010 letter (d) Mr Ahmad confirmed that HMRC did not send him a copy.

42. On the balance of probabilities, I find that the letter dated 26 April 2010 was not sent to HMRC other than as an attachment to Mr Ahmad's letter of 3 October 2011. As a result, it does not provide him with a reasonable excuse.

The telephone calls

43. Mr Ahmad also says he “followed up this request [for a paper return] many times on the phone” and that on one occasion he:

5 “was told by the answering girl that paper copy of this return can only be sent to the agent. I requested her to consider me as my own agent, at that she asked me the agent reference which I did not have. I did not know what to do next and I stopped at that.”

44. HMRC say that they have no records of any requests for a paper return before 17 March 2011.

10 *Findings of fact on the telephone calls*

45. Mr Ahmad does not provide any dates for these calls and has retained no names of those to whom he spoke. He provides information about only one call, during which he says he was told by HMRC that he must be an agent before he can receive a paper partnership return, and that after this call “he stopped at that.”

15 46. Although HMRC say they have no record of these calls, as already noted the partnership call record only covers the period from March to May 2011.

47. The Tribunal can only make its decisions on the evidence. I am provided with witness evidence from Mr Ahmad that he did make calls, and a submission (with possibly incomplete evidence) from HMRC that he made no calls.

20 48. I therefore find that one call was made, during which Mr Ahmad was told that only agents were sent paper returns. However, on the balance of probabilities, and noting the lack in particular of any detail provided by Mr Ahmad about other calls, I find that this was the only occasion on which he requested a paper partnership return.

Decision on the telephone calls

25 49. Mr Ahmad says that, having received the advice that only agents were issued with paper returns, he “stopped at that”.

30 50. However, he knew he had an obligation to file a return by the due date. It is clear from Mr Ahmad’s evidence, as well as the HMRC SA phone records, that this was not the first year in which the partnership had filed paper returns, and the advice provided by the HMRC call centre operative would have been out of line with Mr Ahmad’s previous experience – and, indeed, with his later behaviour when he called on 17 March 2011 asking for a paper return.

35 51. Mr Ahmad did not explain to the Tribunal how he planned to meet his statutory obligation in the absence of a paper return, given his unwillingness to use internet filing.

52. Someone who “seriously intends to honour their tax liabilities and obligations” would have followed up the erroneous HMRC advice with another call, or written a letter. On the evidence provided, I have found that no subsequent calls were made,

and no letters sent – and this finding is supported by Mr Ahmad’s statement that having been told that only agents were issued with paper returns, he “stopped at that”.

53. Responsibility for the late filing of the return rested with Mr Ahmad and he knew that it was not possible for him to meet his statutory responsibilities unless he either
5 filed an online return or obtained a paper return. “Stopping at that” is not the
behaviour of a person who seriously intended to honour his tax obligations.

Decision

54. Taking into account all the factors in this case, I find that the partnership does not have a reasonable excuse.

10 55. As a result, the appeal is dismissed and the penalties confirmed.

56. 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
15 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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Anne Redston

TRIBUNAL PRESIDING MEMBER

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RELEASE DATE: 03 May 2012