



TC02122

Appeal number: TC/2011/10216

***LATE PAYMENT OF TAX – surcharges – reasonable excuse – appeal
dismissed***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

HAROON AHMAD

Appellant

- and -

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

TRIBUNAL: JUDGE J. BLEWITT

The Tribunal determined the appeal on 11 June 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 21 November 2011(with enclosures), HMRC's Statement of Case submitted on 24 January 2012(with enclosures) and the Appellant's Reply dated 26 January 2012 and 8 February 2012.

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DECISION

1. This is an appeal against two surcharges totalling £645.17 imposed by HMRC for the late payment of Self Assessment tax due for the year ending 5 April 2010.

2. By way of background, the 2009/2010 notice to file was issued to the Appellant on 6 April 2010. The filing date was 31 October 2010 for a paper return or 31 January 2011 if filed online.

3. The Appellant filed the return online on 14 July 2010 and a liability of £6554.20 was identified. As the tax due on 31 January 2011 was still outstanding on 28 February 2011 a surcharge at 5%, that being £327.71, was issued on 7 April 2011. A second surcharge in the sum of £317.46 was imposed on 19 August 2011 in respect of the outstanding tax due at that date of £6349.20.

4. The Appellant appealed against both surcharges. The grounds of appeal relied upon by the Appellant were that he was paying the tax due in instalments via Direct Debit due to his financial crisis.

5. HMRC rejected the Appellant's appeal and by letter dated 26 September 2011 the Appellant requested a review of HMRC's decision. The Appellant reiterated the fact that he was paying the tax liability in instalments as agreed after lengthy communication with HMRC. The Appellant also referred to his financial crisis arising from a road accident in October 2010 and another in April 2011, although no further information is given about either accident. The Appellant summarised the communication between himself and HMRC from 31 December 2010 onwards and explained that continuous payments have been made since the Direct Debit was set up on 5 April 2011.

6. By letter dated 26 October 2011 HMRC notified the Appellant that the surcharges were upheld after review on the basis that no formal Time To Pay arrangement had been agreed with HMRC.

7. In his Notice of Appeal to the Tribunal, the Appellant stated:

"HMRC's is not consideration on facts. Its late payment surcharge notice but I am not absolutely late for paying a tax, but paying a tax in instalments through direct debit with mutual understanding/consideration after long/recorded delivery communication with HMRC. Tax has been due in 31st January 2011 but I have communicated with HMRC from 31st December 2010 for tax reduction and instalments due to my financial crises. I have been completed communication with HMRC in 23rd March 2011...then started paying tax in instalments...until now 08 instalments tax has been gone. All letters have been send to HMRC through royal post recorded delivery and all record has available for future reference on request. So once after all (tax reduction and payment in instalments) matter has been decided with HMRC then why imposed late payment surcharge on tax account. Please review my appeal on reality and facts."

8. The Appellant provided a number of recorded delivery receipts in support of his appeal, together with correspondence to and from the Debt Collections Team which confirmed that a direct debit in the sum of £50 per month was accepted on 15 March 2012.

5 9. HMRC provided a log of communication with the Appellant which confirmed that the Appellant contacted HMRC on 31 December 2010 to request a reduction in his payment on account for 10/11 and a Time To Pay arrangement. On 28 January 2011 HMRC reduced the 09/10 payment on account but advised the Appellant to contact the Debt Management Unit to arrange payment of the outstanding tax. On 13
10 February 2011 HMRC notified the Appellant of the outstanding debt and on 14 February 2011 the Appellant wrote to HMRC about the tax due but made no payment proposals. On 27 February 2011 HMRC issued a statement of outstanding liability to the Appellant. On 2 March 2011 the Appellant was again reminded of the outstanding liability.

15 10. On 22 March 2011 HMRC contacted the Appellant who stated that he was unable to pay rent and utility bills due to the recession and the fact that his self employed business had closed, however he had found employment and offered to pay £50 per month towards the outstanding tax liability. HMRC requested full details of the Appellant's income and expenditure by 25 March in order to reach an agreed
20 Time To Pay arrangement and stated that the Appellant should pay the proposed £50 in the intervening period. HMRC stipulated that once the Appellant had sent in the information he should call HMRC, otherwise recovery action would continue. The Appellant faxed the details requested to HMRC on 24 March 2011 but failed to telephone HMRC to agree a payment plan.

25 11. At the date of submission of HMRC's Statement of Case the Appellant had continued to pay monthly instalments of £50 but had not contacted HMRC to formally agree a Time To Pay arrangement.

30 12. The issue for the Tribunal to determine is whether a reasonable excuse existed for the late payment of tax throughout the period of default, namely 31 January 2011 to 24 January 2012.

35 13. The Tribunal was sympathetic to the financial difficulties suffered by the Appellant and accepted that the Appellant had made attempts to discuss a payment plan with HMRC. However, the Tribunal noted that no Time To Pay arrangement was agreed between the Appellant and HMRC prior to the due date of 31 January 2011. Furthermore, HMRC sent two letters to the Appellant regarding the outstanding liability in February and March 2011 and the Appellant did not propose a payment plan until 10 March 2011. The Tribunal noted the log of calls exhibited by HMRC which confirmed that on 22 March 2011 the Appellant was asked to fax information pertaining to his finances and thereafter contact HMRC. The Tribunal found as a fact
40 that the logs clearly indicated that the information requested from the Appellant by HMRC was in order to reach an agreed Time To Pay arrangement and as a result of the Appellant's failure to contact HMRC after faxing the information, no Time To Pay arrangement was in place.

14. For the reasons set out above, the Tribunal found that the Appellant did not have a reasonable excuse throughout the period of default and consequently the appeal is dismissed.

5 15. 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
10 “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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**J. BLEWITT
TRIBUNAL JUDGE**

RELEASE DATE: 5 July 2012