



TC02128

Appeal number: TC/2011/05997

INCOME TAX – Penalty for late filing of Partnership return – section 12AA TMA 1970 – whether notice to file the return was given to the Appellant – held that the Appellant had failed on the balance of probabilities to show that it had not been given to him and that he had not shown that he had a reasonable excuse for the late filing – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**FREDERICK PARKER
t/a COMCONSULT**

Appellant

- and -

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

TRIBUNAL: JUDGE JOHN WALTERS QC

The Tribunal determined the appeal on 30 March 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 27 July 2011, and HMRC’s Statement of Case submitted on 16 September 2011 (with enclosures). The Appellant submitted no Reply.

In that determination, released on 23 April 2012, the Tribunal DISMISSED the appeal. By a letter dated 30 April 2012 sent to the Tribunals Service the Appellant requested full written findings and reasons for the Tribunal’s Decision

DECISION

1. The appeal is against a penalty of £200 imposed for late filing of a partnership return for the year ended 5 April 2010. The return was due for filing on 31 October 2010 (paper returns) or 31 January 2011 (on-line returns). A paper return was filed by the Appellant on 12 May 2011.

2. The Appellant's case is that the partnership return form was not received by the Appellant partnership and that this affords the Appellant a reasonable excuse for the late filing of the return. The Appellant also submits that HMRC was in possession of incorrect information apparently submitted on-line, but not by the Appellant, so that by January 2011 he was 'compelled to submit a written return', because of the 'danger of the previous year's incorrect 'on-line' copy pages (which were not completed by me) being incorrectly validated by my submitting any on-line return for 2010 before HMRC had corrected the anomaly 'on-line' which HMRC had copied to the Appellant' and was incorrect.

3. HMRC submit that on 6 April 2010 the Appellant was sent a notice to complete the 2009-10 partnership return, which explained how a paper return could be obtained if one was required. There was no record that the notice had been returned to HMRC undelivered. Further, both a partnership Notice to File and a Notice to File for a personal tax return were sent to the same address and that HMRC's records do not show that mail was returned undelivered.

4. The Tribunal has to decide on the balance of probabilities whether the notice to complete the partnership return was sent and delivered to the Appellant. HMRC's records show that it was – the self-assessment return summary exhibited as Folio 1 to their Statement of Case. The Appellant contends that HMRC has not been able to show that they mailed the notice on 6 April 2010, or that the notice was delivered to the correct address, or that it had not been returned to HMRC by the Royal Mail or that it had been returned to HMRC by the Royal Mail.

5. In this case the burden of proof is on the Appellant to establish a reasonable excuse and this means that the burden of proof is on the Appellant to show that on the balance of probabilities the notice was not given to the Appellant. The Tribunal finds as a fact that the notice was given to the Appellant as contended by HMRC, or, in other words, that the Appellant has not discharged the burden of proof on him. The Tribunal holds for this reason that the Appellant has not shown a reasonable excuse for the late filing of the return. The appeal is therefore dismissed.

6. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has the 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.

**JOHN WALTERS QC
TRIBUNAL JUDGE**

RELEASE DATE: 11 July 2012