



TC02138

Appeal number: TC/2012/00691

Penalties. Surcharges. Honest mistake. Reasonable excuse.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MRS MOIRA PATTERSON

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE GERAINT JONES Q. C.

The Tribunal determined the appeal on 12 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 20 December 2011 and HMRC's Statement of Case submitted on 20 February 2012.

DECISION

1. The appellant, Mrs Patterson, has appealed against HMRC's decision to demand from her £2726.37 in respect of surcharges and interest in respect of tax paid late for the fiscal years ended 5 April 2007 and 5 April 2008.

2. I should at once point out that there is no appeal mechanism in respect of interest. It is either due or it is not. The Tribunal has no power to remit or waive interest if it is statutorily due on sums that remain unpaid.

3. Accordingly, this appeal concerns a surcharge of £633.24 in respect of 2006/2007 and a surcharge of 678.64 in respect of 2007/2008.

4. The appellant says that for a variety of reasons, including building a new house and episodes of ill-health, she fell behind with her tax returns. However, she says that she realised that a tax liability would arise for each of those fiscal years for both her and her husband and so, albeit not accompanied by tax returns, cheques were sent to HMRC in the sums of £10,000 and £1000 respectively. It had been her intention that the £10,000 payment would be credited to her account and the £1000 payment to her husband's account. By reason of what the appellant calls a "clerical error" it seems that the cheques were credited with the £10,000 credited against the appellant's husband's account and the £1000 against her account. That had not been her intention. The appellant does not blame the respondent for that error; it seemingly arising because of the manner in which those payments were sent and the instructions given about the accounts to which they were applicable.

5. The appellant says that this meant that when all tax returns were up to date and the final position was known, her husband received a repayment of £9,330.99 on 23 June 2011 with a trivial supplement whilst she incurred interest and surcharges as set out above. The appellant says that this is unreasonable.

6. The appellant argued her case on the basis that it was unreasonable for her to have to pay interest when, as a matter of fact, she had intended to pay £10,000 to the credit of her account but, by reason of her own error, it had been credited to her husband. The respondent makes the point that it acted in accordance with the appellant's instructions.

7. Interest has been correctly calculated on the appellant's account. The fact that the interest payable on the sum overpaid by her husband is not comparable is not a ground of appeal; it is simply a consequence of the way in which these arrangements are usually weighted in favour of the state.

8. So far as the surcharges are concerned the appellant says that she made a genuine error. I accept that she made a genuine error because there would have been no benefit to her in causing the respondent to apply the £10,000 and the £1000 to the incorrect self assessment accounts. Once that is accepted it demonstrates that the appellant honestly believed that she had paid £10,000 of her tax liability even though, until such time as a tax return was submitted, the precise liability would not be known. If a

person has a reasonable excuse for non-payment then no surcharge is due at least throughout the period for which that reasonable excuse existed.

5 9. The £10,000 and the £1000 were paid on 1 January 2009 and the appellant accepts that even if the error (referred to above) had not happened, the 2006/2007 tax
10 due would have been paid 12 months late. A first surcharge becomes due if tax is paid more than 28 days after the due date and the second surcharge becomes due if tax is not paid within six months thereafter. As the appellant accepts that the £10,000 and the £1000 were not paid until 1 January 2009, it follows that there can be no reasonable excuse in respect of that tax year. Although the appellant has referred to building a house and episodes of bad health, there is insufficient detail to allow me to conclude that those identified excuses are, when viewed objectively, reasonable and explanatory of the lengthy delay involved in submitting the tax returns and making the appropriate payments.

10. Accordingly, the appeal against the surcharge for 2006/2007 must fail.

15 11. So far as the surcharge for 2007/2008 is concerned the appellant contends that as her tax liability for that year was £6,786.54, she honestly believed that most, if not all, of that sum had been paid because she believed that £10,000 was paid on 1 January 2009. The appellant could not know the precise amount of tax paid for the tax year because, at that time, she did not know the precise sum due for the preceding tax year,
20 that is, 2006/2007. The tax liability for that earlier year was £6,332.40 which means that the most that was paid towards the tax liability for the later year, that is, 2007/2008, was £3,667.60. In fact the liability for that later year was £6,786.54 which meant that a balance of £3,118.94 remained due and payable.

25 12. As I am persuaded that the appellant had a reasonable excuse for the non-payment of £3667.60, that is, her honest belief that that sum (albeit not then quantified) had been paid towards any tax liability, it follows that no surcharge is due on that sum.

30 13. The appropriate calculation needs to be undertaken on the basis that the surcharge for 2007/2008 is payable on the sum of £3,118.94 rather than on the full sum of £6,786.54. The appeal is allowed to that limited extent. The surcharge for 2007/2008 is reduced to £311.89.

35 14. 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.

Decision.

5 Appeal allowed in part as set out in paragraph 13 above.

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**GERAINT JONES Q. C.
TRIBUNAL JUDGE**

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RELEASE DATE: 19 July 2012

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