



TC02526

Appeal number: TC/2012/03789

Penalty - late filing of partnership return - s 93A TMA 1970 - appellant maintained return had been filed on time – appellant’s evidence accepted - appeal allowed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CLAIRE NEWTON

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE MICHAEL S CONNELL
BEVERLEY TANNER**

Sitting in public at 4th Floor Byron House Maid Marion Way Nottingham on 23 October 2012

Mrs. Claire Newton and Mr. S Newton, for the Appellant

Mr. Osborne, Officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

- 5 1. This case was originally categorised as a default, paper case under rule 26 of the Tribunal Procedure (First-Tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases).
2. The Appellant appeals against first and second fixed penalties imposed under section 93A of the Taxes Management Act 1974, for the late filing of the partnership tax return for the tax year 2007/08 of 'The Codfather,' of which the Appellant has been treated by HMRC as the representative partner.
- 10 3. On 7 August 2012. The appeal was heard by Judge Christopher Staker, who directed that the case be re-categorised to the basic category and listed for hearing in order that the Appellant could give oral evidence to the Tribunal relating to matters in dispute. Judge Staker in his Directions stated that it would assist the Tribunal if the Appellant could provide a copy of the 2007/08-partnership tax return.
- 15 4. The deadline for filing the partnership return with HMRC was 31 October 2008 for a paper return or 31 January 2009 if filed online.
5. The Appellant has not sought to dispute that a partnership tax return was required to be filed by that deadline. Rather, the Appellant's case is that the return was submitted to HMRC within that deadline.
- 20 6. HMRC say that the Appellant's individual tax return and the partnership tax return were received on 7 August 2008. Both returns were sent back to the Appellant, as they were incomplete. HMRC say that although the Appellant resubmitted her individual tax return on 19 September 2008 she did not resubmit the partnership tax return. Despite penalty notices issued on 17th every 2009 and 4 August 2009, and despite HMRC's letter refusing her appeal on 16. November 2009, the Appellant has still not submitted a complete and correct
25 2007/08 partnership tax return.
7. The Appellant agrees that both her individual and the partnership returns were sent back to her by HMRC in September 2008, as they were incomplete. However, she says that these were then corrected and resent by return of post the same day. The Appellant says 'after my
30 first (wrong) tax bill I appealed and won and was asked to fill in a second partnership return which I did the same day. After my second (wrong) tax bill I appealed and won my case again and was then asked to fill in a third copy of the partnership form which is when I wrote to the complaints department as I realised there was something wrong'
8. The Appellant is therefore saying that she submitted the corrected partnership tax return
35 twice whereas HMRC state that the return has never been received.
9. At the hearing the Appellant attended with Mr. SA Newton her former partner. Mrs. Newton reiterated what she had said in her notice of appeal as outlined above. She said that she had moved several times since 2009 and no longer had a copy of the partnership return. She said that the return along with the individual returns for herself and Mr. Newton were
40 re-sent to HMRC in the same envelope. She added that her self-employment and the partnership ceased as at 5 April 2008 and nil returns were processed for both 2008/09 and 2009/10 in July 2010 at which stage earlier assessments were automatically reduced to nil Mr. Newton agreed with everything Mrs. Newton said. He said that Mrs. Newton had

corrected and resent the returns by return of post the same day and in the same envelope and confirmed that during the process of appealing against incorrect assessments a second and then a third return had been submitted to HMRC. It was at that stage that Mrs. Newton wrote to HMRC's complaints department.

- 5 10. The Tribunal accepted the evidence of the Appellant and that of Mr. Newton and found that the Appellant had submitted the partnership tax return to HMRC and consequently complied with her obligations under section 93A TMA 1970. The appeal was therefore allowed and the penalty determinations discharged.
- 10 11. 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
- 15 decision notice.

MICHAEL S CONNELL
TRIBUNAL JUDGE

20 **RELEASE DATE: 7 February 2013**