



TC02608

Appeal number: TC/2011/7054

INCOME TAX – PENALTIES FOR LATE FILING OF PARTNERSHIP RETURNS – *Whether Appellant had reasonable excuse for default – No – Appeal dismissed.*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RASHID ZAMAN t/a NISA TODAY

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE MICHAEL TILDESLEY OBE

The Tribunal determined the appeal on 15 March 2013 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 26 July 2011 and HMRC's Statement of Case submitted on 31 October 2011. The Appellant did not make a reply to the statement of case.

DECISION

1. The Appellant appeals against the imposition of a fixed penalty in the sum of £200 for the late filing of partnership tax returns for the year ending 5 April 2010.

5 2. The Tribunal finds the following facts:

(1) The Appellant was the nominated partner for the partnership. The other partner was a Mr O Farooq.

10 (2) On 6 April 2010 HMRC issued the Appellant with notice to file a partnership return with a filing date of 31 October 2010 or if filed online 31 January 2011.

(3) On 15 February 2011 a penalty notice in the amount of £100 was issued to each partner.

(4) On 3 March 2011 the Appellant submitted an unsigned partnership return which was returned by HMRC.

15 (5) As at 31 October 2011 HMRC had not received a partnership return.

3. The Appellant asserted that the partnership return was delivered to HMRC's Bradford Office on 31 January 2011. The Appellant did not have the Unique Tax Reference (UTR) for the partnership which necessitated the hand delivery of the return. HMRC had no record of receipt of the return on 31 January 2011. The notice to file sent in April 2010 to the Appellant cited the UTR for the partnership.

4. The Tribunal has limited jurisdiction in penalty Appeals which reflects the purpose of the legislation of ensuring that tax payers file their returns on time. The Tribunal has no power to mitigate the penalty. The Tribunal can either confirm the penalty or quash it if satisfied that the Appellant has a reasonable excuse for his failure. If there is a reasonable excuse it must exist throughout the period of default. The Appellant has the obligation of satisfying the Tribunal on a balance of probabilities that he has a reasonable excuse for not filing the returns on time.

5. The statute provides no definition of reasonable excuse except that inability to pay the tax shall not be regarded as an excuse. In considering a reasonable excuse the Tribunal examines the actions of the Appellant from the perspective of a prudent tax payer exercising reasonable foresight and due diligence and having proper regard for her responsibilities under the Taxes Acts.

6. The Tribunal does not understand the relevance of the Appellant's assertion that he hand delivered the return to the Bradford office on 31 January 2011. The filing date for paper returns was 31 October 2010, in which case the hand delivered return was late. The Tribunal, however, is not convinced that the Appellant in fact handed in the return on 31 January 2011. The Appellant has not produced a copy of HMRC's acknowledgement. Also the Appellant asserted that the hand delivered return was sent back with a UTR and resubmitted by the Appellant on 3 March 2011. If that was the case the return of 31 January 2011 must have been unsigned, in which case it was not a valid return.

7. The Appellant's only reason for the delay with filing the return was that he did not have the partnership's UTR. The Tribunal is satisfied that HMRC provided him with the UTR on the notice to file. A prudent tax payer would read the information that was sent to him by HMRC and would make enquiries of HMRC in good time before the filing date about the UTR if he had misplaced the letter.

8. The Tribunal, therefore, finds that the Appellant did not have a reasonable excuse for not filing the returns on time. The Tribunal dismisses the Appeal and upholds the penalty in the sum of £200.

9. 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.

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**MICHAEL TILDESLEY OBE
TRIBUNAL JUDGE**

RELEASE DATE: 21 March 2013

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