



**TC04113**

**Appeal number: TC/2014/02995**

*Penalty for late filing of personal tax return – whether there was a reasonable excuse lasting throughout the period of default – held no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MOHAMMAD HUSSAIN**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE JOHN N. DENT**

**The Tribunal determined the appeal on 16<sup>th</sup> September 2014 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 22<sup>nd</sup> May 2014 (with enclosures), and HMRC's Statement of Case (with enclosures) received by the Tribunal on 22<sup>nd</sup> June 2014.**

## DECISION

1. By Notice of Appeal dated 22 May 2014, Mr Hussain (“the Appellant”) appealed against the fixed penalty of £100, imposed under Paragraph 3 of Schedule 55 Finance Act 2009 for the late filing of his individual tax return for the year ended 5 April 2013.

### *Background*

2. A notice to file an individual tax return for the year ending 5 April 2013 was issued to the Appellant on 6 April 2013; the filing date was 31 October 2013 for a non-electronic return or 31 January 2014 if the return was filed online.

3. HMRC issued a £100 late filing penalty notice on 18 February 2014.

4. The Appellant’s return for the year ended 5 April 2013 was received by HMRC on 28 February 2014.

### *Appeal*

5. On 24 March 2014 the Appellant appealed against the penalty on the grounds that the late filing was due to his accountant’s father taking ill health and being rushed to hospital. This resulted in the accountant holding off the tax return

6. On 7 April 2014 HMRC rejected the appeal and offered a review.

7. On 22 April 2014 the Appellant requested a review stating that the accountant normally deals with all the finances of the businesses. He had not been able to complete these on time due to the illness of his father. In such a case the Appellant’s son Imran Zia would deal with the finances, but unfortunately he was undergoing physiotherapist treatment and was unable to deal with the finances at that time. He sent a letter from AXA PPP Healthcare which showed that Mr Zia had had physiotherapy on 30 December 2013. The review concluded that the decision should be upheld. In the review, HMRC said that the Appellant’s accountant had filed other clients’ returns on 31 January 2014. They also said that the physiotherapist appointment was on 30 December 2013, whereas the deadline for filing was not until 31 January 2014, leaving sufficient time to ensure that the return was received or to make alternative arrangements.

8. On 22 May 2014 the Appellant appealed to the Tribunal. He said that the accountant deals with his return only, and could not file it as his father was seriously ill in hospital. He also said that the treatment which Mr Zia was undergoing had not allowed him to be mobile or to sit at the computer desk which would worsen the symptoms. He produced evidence that Mr Zia had had further physiotherapy treatment on 28 January 2014.

9. HMRC submit that it is the Appellant's responsibility to ensure that he adheres to his legal obligation to file his personal tax returns by their filing dates. They submit that reliance on an agent or third party does not constitute a reasonable excuse, and that an individual should take reasonable care to explain to a third party what they require them to do, to set deadlines for the work and to make regular checks on progress. The accountant had filed the partnership return for Intercontinental Hospitality, of which the Appellant is a partner, on time on 31 January 2014.

10. HMRC further submit that to accept an illness as a reasonable excuse for not adhering to the legal requirement of the Appellant filing his Self Assessment Tax return by the legislative due date, the illness of Mr Zia must be so serious that it prevented him from controlling all business affairs immediately before the due filing date and from then to the date the return was finally filed. In addition, such a condition should begin in a timeframe where it would be unreasonable

### *Discussion*

11. The Tribunal firstly considered whether the illness of the accountant's father constituted a reasonable excuse which lasted throughout the period of default. The accountant was clearly able to file or make arrangements to file the partnership return on time. In the finding of the Tribunal the accountant had delayed filing until the last minute, and then failed to file the return until 28 February 2014. The ultimate responsibility for filing the Return is with the individual, and the illness of the accountant's father does not, in the finding of the Tribunal, provide the Appellant with a reasonable excuse. If the Appellant uses an agent such as an accountant, the Appellant is in general under an obligation to ensure that the agent files the return on time. Failure of the agent to meet his or her obligations to the Appellant might entitle the Appellant to some recourse against the agent, but in the Tribunal's view, reliance on a third party such as an accountant cannot relieve the Appellant of his own duty to file his return on time

12. The Tribunal went on to consider whether the Appellant's son's illness constituted a reasonable excuse which lasted throughout the period of default. The Tribunal found that the Appellant was fully aware of his responsibility to file a Return and had ample time to file the Return himself or to make arrangements for someone to do it on his behalf. He was notified of the requirement to file a Tax Return and has failed to do so. His son had two sessions of physiotherapy treatment and attended on both occasions as an outpatient. He had ample opportunity to file the return himself, or to make arrangements for someone to do it on his behalf. The return was not filed until 28 February 2014, almost a month after the due date. The Tribunal found on the facts that the Appellant did not make sufficient efforts to ensure that his return was filed on time.

13. The Appellant has a responsibility to file a Return under Section 8 Taxes Management Act 1970. The Tribunal find that the Appellant does not have a reasonable excuse for the late filing. The late filing penalty is in accordance with the legislation and there are no special circumstances allowing the penalty to be reduced.

14. For those reasons, The Tribunal find as a fact that there was no reasonable excuse which lasted throughout the period of default.

*Decision*

15. The appeal is dismissed and the late filing penalty of £100 is confirmed

5 16. 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  
10 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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**JOHN N. DENT  
TRIBUNAL JUDGE**

**RELEASE DATE: 10 November 2014**

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