



TC04233

Appeal number: TC/2013/06393

*Income tax – assessment and penalty for late return and late payment of tax due -
whether a reasonable excuse - no - application to permit a late appeal refused -
appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MEHTAB SHAH

Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL CONNELL
 MR NOEL BARRETT**

**Sitting in public at Bradford Appeals Tribunal, Phoenix House, Rushton Avenue,
Bradford on 6 October 2014**

The Appellant in person

Ms. Nadine Newham Officer of HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This is an appeal against a penalty assessment of £1,614.00 imposed under s 59C (2) TMA 1970 in respect of the late payment by the Appellant of tax for the year ending 5 April 2010 under Schedule 41 Finance Act 2008, and a fixed penalty of £300.00 for failure to notify a taxable source of income.
2. The Appellant's appeal was out of time and he therefore made an application for permission to make a late appeal.
3. The amount of tax paid late is not in dispute. The issue to be determined is whether the Appellant had a reasonable excuse for failure to notify his taxable income and for the late payment of income tax.

Background

4. In the financial year 2009-10, the Appellant was a self-employed salesman working for Safestyle UK Limited, on commission based earnings
5. The Appellant's earnings in 2009-10, as reported by Safestyle UK Limited, were £14,497.00. He failed to report his income and submit a self-assessment return to HMRC.
6. On 10 November 2011, HMRC wrote to the Appellant at the address last known to them (being the Appellant's parents address) requesting information and documentation in order to check his income tax position and any possible tax liabilities that may be due. The information and documentation requested was:
- i. The date the Appellant commenced receiving commission earnings.
 - ii. The source(s) of the commission earnings.
 - iii. Details of all income received for each tax year from commencement to 5 April 2011.
 - iv. Full details of any expenses he wished to claim against the commission earnings with supporting evidence.
 - v. The reason why his income had not been disclosed to HMRC from commencement.
 - vi. Details of all other sources of income received in each tax year, including employment income, any other self-employment income, benefits, pensions, interest from financial institutions, dividends and any foreign income.

7. The Appellant did not respond to the request and on 20 December 2011 was served with a notice requiring him to provide the information and the documents requested by 19 January 2012.

5 8. The Appellant again did not respond, and further reminders were sent on 31 January 2012 and 20 February 2012, when the fixed penalty of £300 was imposed, and again on 10 May 2012, when HMRC issued a Revenue Assessment of £2,306.96.

9. The £2,306.96 tax should have been paid no later than 31 January 2011. A summary of the assessment and penalties is as follows:

| | | |
|----|-----------------------------------|---------------|
| | Income received (gross) | |
| 10 | Profit from self-employment | 14,497.00 |
| | Minus Personal Allowance | 6,475.00 |
| | Total income on which tax was due | 8,022.00 |
| | Income Tax £8,022.00@ 20% | 1,604.40 |
| | Plus Class 4 NIC @ 8% | <u>702.56</u> |
| 15 | Total Tax and Class 4 NIC | 2,306.96 |
| | Penalties | 1,614 |
| | | <u>300</u> |
| 20 | Total penalties | 1,914 |

10. On 25 June 2013, the Appellant wrote to HMRC querying why he had received an assessment and penalties in respect of the year 2009-10, saying that he had been unemployed in 2009-10 and that he had not been self-employed until March 2013.

25 11. On 7 August 2013, HMRC, having received notification that the Appellant had appointed B & Y Noble accountants to act on his behalf, but not having received the Appellant's authority for them to act (form 64 - 8) informed the Appellant that any appeal against the assessment of 10 May 2012, should have been made within 30 days of that date, and that HMRC were unable to accept a late appeal. Any appeal would have to be addressed to the Tribunal service.

30 12. On 10 September 2013 the Appellant submitted a notice of appeal to the Tribunal service. He said:

35 "When I saw Mr Noble on 11 June 2013 I had misplaced HMRC's letter of 10 May 2012. When I found it two weeks later he wrote to HMRC on 5 July 2013. As stated in my letter dated 25 June 2013 I did not work during the tax year 2009 - 10 and I should not have any tax or NIC to pay."

13. On 7 December 2013, Mr Noble of B & Y Noble, wrote to the Tribunal service saying that he was resident in Cyprus the most of the year and had not received notification from the Tribunal service until his return to the UK in December 2013. Mr Noble said that his client had not been notified by HMRC that any appeal to the assessment had to be lodged within 30 days, and although reiterating his client's
5 assertion that he had not worked in 2009–10, conceded that the Appellant should have lodged an appeal with HMRC sooner than he did.

14. The issues before the Tribunal are whether to allow a late appeal and if so whether the Appellant had a reasonable excuse for making the late payment of
10 Income Tax, and if so whether the excuse continued throughout the entire period of default (Section 59C (12) TMA 1970).

15. At the beginning of the hearing the Appellant said that he had 'got his years mixed up', and that in fact he had worked for Safestyle UK Ltd during 2009-10. He applied to the Tribunal for an adjournment saying that he had not had time to prepare
15 its case. He had only recently returned from Coventry where he had attended a funeral. His accountant was ill and unable to represent him.

16. The Tribunal, having noted the fact that the Appellant now agreed that he had worked in 2009-10, refused his application for an adjournment, but for the purposes
20 of determining the Appellant's application to make a late appeal, agreed to hear his submissions and those of HMRC, in order to consider the merits of the application.

17. The Appellant said that he had moved addresses several times and had not received letters sent to him by HMRC between January and May 2012. He said that he had worked for eight or nine months in 2009–10 and agreed that he had should have filed a return.

18. The Appellant did not dispute the assessment of £2,306.96, but did not agree
25 that he should pay any penalties. He said that HMRC had not written to the correct address, and that he was unaware of the 2009-10 assessment until June 2013. He had left his parents' address some years previously and had moved addresses several times. He did not visit his parents' house, as he perhaps should have done, to collect
30 any mail that might have been sent to him. Had he done so, or had HMRC written to him at his correct address, it may have prompted him to file his return and pay the tax due.

The Legislation

19. Under Schedule 41 finance act 2008 Paragraph 5 'Degrees of Culpability'

35 (1) A failure by P to comply with a relevant obligation is—
(a) "deliberate and concealed" if the failure is deliberate and P makes arrangements to conceal the situation giving rise to the obligation, and
(b) "deliberate but not concealed" if the failure is deliberate but P does
40 not make arrangements to conceal the situation giving rise to the obligation.

- (2) The making by P of an unauthorised issue of an invoice showing VAT is—
- (a)“deliberate and concealed” if it is done deliberately and P makes arrangements to conceal it, and
- 5 (b)“deliberate but not concealed” if it is done deliberately but P does not make arrangements to conceal it.
- (3) The doing by P of an act which enables HMRC to assess an amount of duty as due from P under a relevant excise provision is—
- (a)“deliberate and concealed” if it is done deliberately and P makes
- 10 arrangements to conceal it, and
- (b)“deliberate but not concealed” if it is done deliberately but P does not make arrangements to conceal it.
- (4) P's acquiring possession of, or being concerned in dealing with, goods on which a payment of duty is outstanding and has not been
- 15 deferred is—
- (a)“deliberate and concealed” if it is done deliberately and P makes arrangements to conceal it, and
- (b)“deliberate but not concealed” if it is done deliberately but P does not make arrangements to conceal it.
- 20 20. Under paragraph 6 of Schedule 41 – ‘Amount of penalty: standard amount’
- 5(1) The penalty payable under any of paragraphs 1, 2, 3(1) and 4 is—
- (a) for a deliberate and concealed act or failure, 100% of the potential lost revenue,
- 25 (b) for a deliberate but not concealed act or failure, 70% of the potential lost revenue, and
- (c) for any other case, 30% of the potential lost revenue.
- (2) The penalty payable under paragraph 3(2) is 100% of the potential lost revenue.
- (3) Paragraphs 7 to 11 define “the potential lost revenue”.
- 30 21. Section 118 (2) TMA 1970 provides that a person shall not be deemed to have failed to do anything required to be done within a limited time if they did it within such further time, if any, as allowed or, where a person had reasonable excuse they did so without unreasonable delay after the excuse had ceased.

Conclusion

- 35 22. If a taxable source of income has not been declared to HMRC by 5 October following the end of the tax year in which the source commenced then HMRC have the right to charge a penalty under s 7 TMA 1970 and Schedule 41 Finance Act 2008.
23. HMRC wrote to the Appellant several times requesting information regarding his income and served notice on him that a fixed penalty £300 would be payable if the

information was not forthcoming together with the possibility of a further daily penalty of up to £60 a day until the information was provided.

24. The penalty payable under paragraph 6 Schedule 41 Finance Act 2008 has been calculated at 70% of the tax due of £2,306.96. This is the maximum penalty payable on the basis that HMRC could not take into account any disclosure by the Appellant in terms of “telling” HMRC as much as he could have done about the failure and additional tax due, “helping” HMRC in working out the correct amount of tax and “giving access” to records. Whilst the Appellant’s actions or lack of action bordered on concealment, we note that HMRC have nevertheless calculated the penalty at 70% (rather than 100%) on the basis that the concealment was not deliberate. We concur with that.

25. The Appellant has not submitted any valid grounds of appeal. He has not put forward any acceptable reason why he failed to submit a return in respect of this self-employed income for 2009-10. The Appellant does not dispute the assessment of £2,306.96 for 2009-10. He only disputes the penalties. He has not put forward any acceptable reasons for the late appeal. Given that the Appellant’s only stated grounds for not submitting his 2009-10 return is that he “ got his years mixed up”, there is no reason why permission to make a late appeal should be granted. There is no merit in the Appellant’s appeal whatsoever.

26. Permission to appeal is accordingly refused and the penalties of £1,614.00 and £300 are confirmed, together with interest chargeable on unpaid tax liabilities under s 86 TMA 1970.

27. 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.

MICHAEL S CONNELL
TRIBUNAL JUDGE

RELEASE DATE: 16 January 2015