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TC 04356

Appeal number: TC/2014/06530

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INCOME TAX – late submission of individual tax return – Whether reasonable excuse for late submission of return - No.

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

NEIL PATRICK O’KEEFFE

Appellant

- and -

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

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**TRIBUNAL: PRESIDING MEMBER
 PETER R. SHEPPARD FCIS FCIB CTA
 AIIT**

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The Tribunal determined the appeal on 1 April 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 2 December 2014, and HMRC’s Statement of Case submitted on 27 January 2015 with enclosures. The Tribunal wrote to the Appellant on 27 January 2015 indicating that if they wished to reply to HMRC’s Statement of Case they should do so within 30 days. No reply was received.

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DECISION

1. Introduction

This considers an appeal against a penalty of £100 levied by the Respondents (HMRC) for the late filing by the appellant of its individual tax return for the tax year 2012 – 2013.

2. Legislation

Finance Act 2009 (FA 2009) Schedule 55

Taxes Management Act 1970, (TMA 1970) in particular Section 7(1), 8(1D), and 8(1G)

3. Case law

Rowland v HMRC [2006] STC (SCD)536

Anthony Wood t/as Propave v HMRC [2011] UK FTT 136 (TC) TC 001010

4. Facts

The filing date for an individual tax return is ordinarily determined by Section 8 (1D) of the Taxes Management Act 1970. For the period ended 5 April 2013 an electronic return must be filed by 31 January 2014.

In this case the return for the year ended 5 April 2013 was not issued to the Appellant until 10 April 2014. Section 8 (1G) TMA 1970 has the effect that if a notice to file a return in respect of 2012-2013 is given after 31 October a return (whether electronic or not) must be delivered during the period of 3 months beginning with the date of the notice. Under the terms of Section 8(1H) HMRC sometimes allow an additional 7 days for provision of the return as they did in this case. The date for submission of the return was therefore 17 July 2014.

5. In respect of the year 2012-2013 HMRC consider the appellant failed to submit his individual tax return until 20 August 2014. As the return was not submitted by the filing date of 17 July 2014 HMRC issued a notice of penalty assessment in the amount of £100 on 22 July 2014.

6. The Appellant completed a form SA370 Self-Assessment: Appeal against penalties for late filing and late payment in respect of this penalty assessment. It was dated 7 August 2014. In that form the appellant states:

“The deadline was met. I can 100% assure you the form was filled in correctly and sent on 6th May 2014. I have spoken to HMRC staff following this letter, they have advised me to use the online assessment which I have completed. Again I stress this document was sent within the stipulated time frame.

HMRC rejected the appeal on 21 August on the grounds the return was still outstanding. The appellant submitted the return electronically on 20 August 2014 and appealed again on 3 September 2014. HMRC replied on 15 September 2014 and in that letter they stated that they did not accept that the appellant had reasonable excuse because proof of postage was not enclosed with their appeal.

7. In a request for review (form SA634) dated 24 September 2014 the Appellant's wife states "it was me who posted the letter. I specifically remember the date as my brother was going on holiday on 8th May and I had gone to his on the way home from work on Tues 6th May as he was going to be busy on the Wednesday. Unfortunately I posted the letter using a post box so I am unable to provide proof of postage. However as a result of this letter going missing I have since obtained proof of postage for all correspondence sent to yourselves (see attached photocopies) Neil replied in time and I can 100% assure you I posted the letter and I feel it extremely unfair that he is being penalised when he has responded within the specified timeframe.

8. The Appellant's requested HMRC to review their decision to levy a penalty and in their letter of 7 November 2014 HMRC confirmed the penalty decision. They said that without evidence of postage they are unable to change the decision. Evidence that subsequent communications to HMRC have been made by recorded delivery is not evidence that the return was posted.

9. Appellants submissions

In his notice of appeal dated 2 December 2014 the appellant states

"The HMRC state they did not receive my tax return which had to be received by 17th July 2014. My wife posted the tax return on 6th May 2014. We have explained in detail to HMRC why she knows the exact date as we are unable to provide evidence. The HMRC are penalising me for a letter going missing, and also indirectly calling my wife a liar. Since the incident I send all letters to HMRC as recorded delivery. (I have provided evidence of this). I was fully aware that if I did not respond and send my tax return in by July I would face a penalty charge which is why I submitted it 2 months before the end date. I received no reminders from HMRC (If I had this would have alerted me to the fact that they had not received my tax return) and so did not realise that there was a problem."

10. In the appeal the appellant also states "I think the HMRC should accept the fact that my wife did post the original return, and that occasionally mail does go astray and waive the penalty."

11. HMRC's Submissions

HMRC contend that the £100 penalty was imposed for filing the return late. The submission to the Tribunal is concerned with an appeal against a penalty imposed under Paragraph 3 of Schedule 55 of the Finance Act 2009 for the late filing of the individual tax return for the period ending 5 April 2013.

12. HMRC say there is no statutory requirement for them to issue reminders. They say the onus is on the taxpayer to ensure returns are filed on time.

13. HMRC consider that because of the lack of provision of proof of posting they do not accept that the Appellant has a reasonable excuse for submitting the return late.

14. HMRC say they have considered Paragraph 16 Schedule 55 FA 2009 and whether there are special circumstances which would allow them to reduce the penalty but consider there are none.

15. The Tribunal's has considered these submissions and comments as follows:

It is the appellant's responsibility to submit returns on time. The penalty may be set aside if the Appellant establishes that he had reasonable excuse for his failure to submit the return on time.

16. A reasonable excuse is normally an unexpected or unusual event that is unforeseeable or beyond the taxpayer's control, and which prevents them from complying with their obligation to file on time. In the Tribunal's view mail going astray might constitute a reasonable excuse. However the appellant has been unable to support his contention that the return was posted on time with proof of posting and therefore regrettably the appeal is dismissed.

17 Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there any special circumstances in this case which would allow them to reduce the penalty and have concluded there are none. The Tribunal sees no reason to disagree.

18. HMRC has applied the late filing penalty in accordance with legislation. The appellant has not provided evidence to support a reasonable excuse for the late submission of his individual tax return for the period 2012-2013. There are no special circumstances to allow reduction of the penalty. Therefore the appeal is dismissed.

19. 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.

PETER R. SHEPPARD

**TRIBUNAL PRESIDING MEMBER
RELEASE DATE: 16 April 2015**