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TC04364

Appeal number: TC/2014/06110

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INCOME TAX – late submission of individual tax return – Whether reasonable excuse for late submission of return - Yes.

15 **FIRST-TIER TRIBUNAL
TAX CHAMBER**

JOANNA L. PORTER T/AS CRAFTY CREATIONS 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**

25 **The Tribunal determined the appeal on 8 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 25 October 2014, and HMRC’s Statement of Case received by the Tribunal on 9 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. A letter dated 4 January 2015 with enclosures was received by the Tribunal on 13 January 2015 and was also considered by the Tribunal.**

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DECISION

1. Introduction

5 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
10 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
15 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.

20 A notice to file a return for the year ended 5 April 2013 was issued to the Appellant on 6 April 2013. The date for submission of the return was 31 October 2013 for a non-electronic return and 31 January 2014 for a return submitted electronically.

5. The Appellant submitted her return electronically on 5 March 2014.

6. Appellant's submissions

25 In addition the appellant also wrote to HMRC on 5 March 2014 explaining why the return had been delayed. The letter states:

30 “Since the 27th January I have been trying to log into my account to pay my self assessment tax. Whenever I did this the website would guide me to a page that said ‘Access Denied’ or it would tell me that I last logged in on the 21st of May 2013. I made a phone call to HMRC where a man told me that there might have been an IT problem and that they will send me a reminder at the end of June. For further more days I kept trying the website just to make sure but nothing had changed. I then received a letter stating that I had a penalty fee of £100 I contacted the IT department and they sent me a new ID number, I was then able to complete my online tax return.

35 I do not think that it is fair that I am being charged for a late submission when it should have been up to the adviser at the point of the first phone call to pass me on to the IT department where the whole problem would have been sorted, telling me that I just had to have a new ID number.

I would therefore be grateful that this charge of £100 would be waived.”

HMRC’s record show that the appellant did telephone them on 29 January 2014. The note is in abbreviated format which the Tribunal understands to mean

5 “taxpayer rang to check whether 2012/13 individual tax return received, advised not, taxpayer stated she went onto online services and stated submitted, advised to resubmit and keep note of confirmation number in case of any issues.”

7. As the return was not submitted by the filing date of 31 January 2014 HMRC issued a notice of penalty assessment in the amount of £100 on or around 18 February 2014.

10 8. HMRC’s records also show the appellant also telephoned them on both 4 and 5 March 2014.

9. In a letter dated 7 July 2014 the Appellant appeal against the penalty for late filing. The letter stated:

15 “I have recently received in the post a June 2014 Self Assessment Statement informing me that I have £100 to pay that has been brought forward to a previous statement.

I would be grateful if you would read the enclosed letter that I sent you on 5th March 2014.

20 I am presuming that this is a bill for ‘late submission of my self assessment’ which as your department told me, it was an IT problem that caused this error, and not my fault, therefore I would be grateful if you would eliminate this bill from my account.’

10. HMRC rejected the appeal on 29 July 2014 saying they could not accept the appeal as it was out of time. They suggested the appellant take the case to this Tribunal.

25 11. In a letter to HMRC dated 6 August 2014 the Appellant states

“The letter I have been sent dated 29 July 2014 stating that I have not appealed in time is extremely unfair.

30 If you refer to my first appeal letter dated 3rd of March, it states that the reason that my lateness in submitting my tax, was due to an IT fault (recorded phone call to prove this). By the time you got back to me stating that I was due a £100 penalty it was past the 30 day deadline anyway. How was I supposed to appeal against this IT fault (recommended by the IT staff) when you did not send the information on time?”

35 12. In a letter dated 2 October 2014 HMRC advised the appellant that they still could not accept the appeal because the deadline for making an appeal had passed. They again suggested an appeal to this Tribunal.

13. In her notice of appeal dated the appellant repeats her letter of 5 March 2014.

14. HMRC's Submissions

5 HMRC contend that the £100 penalty was 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.

15. HMRC say that the appellant successfully filed her return for 2011-2012 online. Therefore they consider her to be experienced with the self assessment system including filing dates.

10 16. HMRC say they refused the appeal because they considered the deadline for making an appeal had passed. On review this decision was upheld.

17. HMRC say they have no record of receiving the 5 March letter but do accept that in a telephone conversation dated 18 March 2014 the appellant said she sent an appeal "the week before last".

15 18. 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 say they have considered whether there any special circumstances in this case which would allow them to reduce the penalty and have concluded there are none.

19. Tribunal's observations.

20 The first matter the Tribunal considered was whether HMRC were correct in saying that the appellant's appeal was out of time. HMRC say they sent the penalty notice on or around 18 February 2014. The only evidence of this is an entry in a HMRC record noting a penalty of £100 dated 18 February 2014. No copy of the actual notice is included in the papers. The Tribunal has therefore no opportunity to consider whether
25 such a notice was accurate or addressed properly. However it is clear that by 5 March 2014 the appellant was aware of the penalty. Notwithstanding the lack of good evidence the Tribunal has proceeded on the basis that a Notice was issued on 18 February 2014 and received by the appellant.

30 30 days after that date is 20 March 2014. The appellant wrote to HMRC on 5 March 2014. The letter quoted above does not use the word "appeal" but it clearly is an appeal. It requests the penalty be waived. HMRC say they did not receive this letter until the appellant sent a copy with her letter of 7 July 2014.

20. The Tribunal notes that in HMRC SA Notes there is a record of a telephone call received from the appellant on 5 March 2014. In that note appears the following

35 "advise that penalty due to late return, to disagree with this advised to put appeal in writing."

In the notes there is also a record of a call on 18 March 2014 (still within the appeal time limit) which states

“Taxpayer advises she sent an appeal notice the week before last...”

5 21. In the light of this evidence the Tribunal considers that the appellant took the advice and wrote to HMRC on 5 March 2014. Thus her appeal was made in time and it was wrong of HMRC to ignore the letter when it eventually came to their attention in the appellant’s letter of 7 July 2014. Therefore the Tribunal is not prepared to dismiss the appeal on the grounds that it was made late, and has proceeded to consider
10 whether the Individual Tax Return was submitted late and if so whether the appellant had a reasonable excuse for the return being late.

15 22. It is clear that the return which was due to be submitted by 31 January 2014 was submitted electronically on 5 March 2014 and was therefore 33 days late. The appellant accepts that this was the case but claims she had reasonable excuse for the delay.

23. 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.

20 24. 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.

25 25. In the Tribunal’s view it is clear that the appellant attempted to file the return online at the end of January 2014 but encountered difficulty repeatedly getting a message “Access denied”. It is evident that on 29 January she telephoned HMRC for assistance but the advice given was not as helpful as it could have been. The appellant continued to have problems despite trying again on a number of occasions. After contacting HMRC again their IT department issued her with a new ID number and the problem was resolved.

30 26. It is clear that the reason for the short delay was an IT problem. The appellant clearly tried to submit her return on time, telephoned and wrote to HMRC and subsequently succeeded in resolving the problem. In the Tribunal’s view these are the actions of a person who is doing their best to comply with the legislation and submit a return on time but unexpectedly encountering unforeseen IT problems which were resolved by HMRC giving her a new ID number.

35 27. The appellant has established that she had a reasonable excuse for the late submission of her individual tax return for the period 2012-2013. Therefore the appeal is allowed.

28. 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

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TRIBUNAL JUDGE

RELEASE DATE: 23 April 2015