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TC04478

Appeal number: TC/2015/01842

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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**

SCOTT RYAN PATTON

Appellant

- and -

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

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

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The Tribunal determined the appeal on 12 June 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 10 February 2015, and HMRC's Statement of Case received by the Tribunal on 24 March 2015 with enclosures. The Tribunal wrote to the Appellant on 26 March 2015 indicating that if he 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

5 This considers an appeal against a penalty of £100 imposed by the Respondents (HMRC) under Paragraph 3 of Schedule 55 Finance Act 2009 for the late filing by the Appellant of its individual tax return for the tax year 2011 – 2012.

2. Legislation

Finance Act 2009 Schedule 55

10 Taxes Management Act 1970, in particular Section 8(1D)

3. Case law

Crabtree v Hinchcliffe (Inspector of Taxes) [1971] 3 ALL ER 967

Clarks of Hove Ltd v Bakers' Union [1979] All ER 152

Rowland v HMRC [2006] STC (SCD) 536

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

Yusuf Budiadi v HMRC [2011] UKFTT 233 (TC) TC 01098

4. Facts

20 The filing date for an individual tax return is determined by Section 8 (1D) of the Taxes Management Act 1970. In this case the return was issued late on 12 June 2014 and by concession the filing date is 3 months and 7 days after the date of issue. The filing date for both the paper and electronic return was 19 September 2014.

25 5. In respect of the year 2011-2012 the Appellant failed to submit his individual tax return until 6 October 2014. As the return was not submitted by the filing date of 19 September 2014 HMRC issued a notice of penalty assessment on or around 23 September 2014 in the amount of £100.

6. On 6 October 2014 the appellant's agent, Streetwise Solutions Limited, appealed to HMRC against the penalty. Their letter states

30 7. "...Please note the penalty was received this morning, and the return was filed today.

We are appealing as we were unaware that you had issued a 2012 tax return. Our records indicate that initially, only a 2014 tax return was issued . the client contacted you to have a 2013 tax return issued . We submitted the 2013 return the day after it was issued and would have submitted the 2012 return had we known it was required.

35 I trust the filing history, and the response to your penalty demonstrates that had we been aware there was a tax return outstanding it would have been seen to.

40 8. HMRC sent the appellant a decision letter dated 4 November 2014 rejecting his appeal. They said that they did not consider the appellant had a reasonable excuse for the late submission of the return but offered a review.

9. On 26 November 2014 the Appellant's agent wrote to HMRC requesting a review.

They stated “The appeals officer does not appear to have considered anything that I wrote to her which was

1. The 2014 return was issued 5th June 2014 and filed very shortly after
2. The client contacted HMRC at the same time to request a 2013 return.
- 5 3. The 2013 return was issued 12th June 2014 and filed the next day;
4. We were unaware there was a 2012 tax return issued , surely the above behaviour would corroborate that if we were, it would have been filed very quickly , just like the 2013 and 2014.
- 10 5. We filed the 2012 tax return the same day we became aware there ws one to file, the day we received the late filing penalty.

We did not say this , but it is clearly our contention that whichever way you informed us that there was a 2012 tax return, we did not receive it, By definition, it is a return, we were unaware there was anything to return.

15 The appeals officer has simply referred to the issue date and associated responsibilities of the taxpayer which is not in dispute.

Our mindset as of 13th June is that we had filed all returns due, just 7 days and 1 day after their issue respectively.”

10. On 21 January 2015 HMRC wrote to the Appellant giving the conclusion of their review which was that the decision to charge the penalty was correct.

20 11. They commented “Whilst ...the 2012-2013 and 2013-2014 tax returns were filed promptly the 2011-2012 tax return has been filed late.

25 12. HMRC referred to a telephone conversation between the appellant and HMRC on 12 June 2014. A transcript of that conversation was included in the bundle of papers provided to the Tribunal. In the call the appellant was advised that a tax return was required for 2011-2012. The appellant was advised that penalties would be due for 2011 -2012 as he should have registered when his self-employment began in 2010. He was advised that a tax return would be issued for 2011-2012 and that the return would be available to be filed online, and that a paper copy would be issued.

30 13. HMRC considered that the appellant had not established a reasonable excuse for the late return for the 2011-2012 tax year.

14. **Appellant’s further submissions**

On 10 February 2015 the appellant’s agent lodged a notice of appeal on the appellant’s behalf. They attached a page of notes which repeat many of the points set out in their letters described in paragraphs 8. and 10. above.

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They also mention that following the telephone conversation the appellant was expecting something in writing. They say that they received no paper returns at all. They sent the return for 2012-2013 because they were aware it was due.

5 They say the telephone call was “a conversation that can easily be misunderstood and forgotten.”

They say that contrary to what the appellant said in the telephone conversation he is not self-employed. He is a director of SRP Aviation Engineering Ltd. His income on the tax return are from his employment and from dividends.

10 The agent quotes directly from paragraph 6 of the judgement of Judge Geraint Jones in the case of Yusuf Budiadi v HMRC [2011] UKFTT 233 (TC) TC 01098

15 “6.....Whilst there may be an onus upon the appellant to make the declaration/return, a person can only declare that which he knows or believes ought to be declared. If the state of his mind is that there is nothing to declare because he has made a mistake of fact, that, in my judgement, can in appropriate circumstances amount to a reasonable excuse. It may not be an exceptional circumstance but that does not prevent it amounting to a reasonable excuse.”

20 The agent says that the situation is different from the norm where tax returns are issued at 12 month intervals.

15. HMRC’s Further Submissions

25 HMRC say that tax returns for 2011-2012 and 2012-2013 tax years were issued to the same address on 12 June 2014. They say that the 2011-2012 return has not been sent back to them.

30 16. HMRC say that their records demonstrate that the Appellant enrolled for Self Assessment on 25 May 2014. The form submitted showed the source of income started on 5 April 2010. However HMRC consider that the appellant should have completed self assessment tax returns from when he was appointed a company director which according to HMRC records was 10 January 2007.

35 17. HMRC have considered special reduction under (paragraph 16 Schedule 55 of the Finance Act 2009). They say special circumstances must be “exceptional, abnormal or unusual” (*Crabtree v Hinchcliffe*) or “something out of the ordinary run of events” (*Clarks of Hove Ltd. v Bakers’ Union*). In their view there are no special circumstances which would allow them to reduce the penalty.

18. Tribunal’s Observations

40 The Tribunal agrees with HMRC that it is the Appellant’s responsibility to submit returns on time. The return for the period 2011 -2012 was due to be submitted by 19 September 2014, but it was submitted late on 6 October 2014. A penalty of £100 is therefore due unless the appellant can establish a reasonable excuse for the delay as referred to in Paragraph 23(1) Schedule 55 Finance Act 2009. 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.

19. It is apparent that the appellant was clearly advised in the telephone conversation that he was required to complete a return for the tax year 2011-2012. It was explained
5 to him that because of his lateness in notifying his liability to file a return for the period he would be liable to a penalty. In the Tribunal's view this potential penalty would not be something that is easily forgotten and should have been sufficiently memorable to the appellant for him to check the position with his agent/accountant. He appears not to have done that.

10 20. The appellant is responsible for meeting the deadline for filing his tax return and it appears that there was a communication gap between the appellant and his agent whereby the appellant neglected to advise his agent both of the requirement for a return for 2011-2012 and the penalties that HMRC advised him would result from his late notification of the requirement to file a return for that period. Unfortunately this
15 oversight by the appellant cannot be regarded by the Tribunal as a reasonable excuse for the late submission of the 2011-2012 tax return.

21. The Tribunal has considered the case referred to by the appellant's agent that is the case of Yusuf Budiadi. That case concerns the late submission of a return by a person in quite different circumstances to the present case. The Tribunal does not
20 disagree with that decision but considers the decision is not applicable to the present case. In the Budiadi case the appellant was not aware of the need to make a return. In the present case in a telephone conversation with HMRC the appellant had been made aware of the need to submit a return.

22. Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the
25 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.

23. HMRC has applied the late filing penalty in accordance with legislation. The
30 appellant has not established a reasonable excuse for the late submission of his individual tax return for the period 2011-2012. There are no special circumstances to allow reduction of the penalty. Therefore the appeal is dismissed.

24. This document contains full findings of fact and reasons for the decision. Any
35 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 JUDGE**

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RELEASE DATE: 19 June 2015