



TC05736

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Appeal number: TC/2013/00347

Income Tax - Individual Tax Return - Late filing Penalty and Daily Penalties - Reasonable Excuse - No- Appeal dismissed

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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ISHRAT AZAM

Appellant

- and -

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

TRIBUNAL: JUDGE JENNIFER A TRIGGER

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25 **The Tribunal determined the appeal on 21 March 2017 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 3 December 2012 and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 31 January 2017.**

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Decision

Introduction

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1. This is an appeal against a Late Filing Penalty (the “Penalty”) and Daily Penalties (the “Penalties”) imposed under Paragraph 3 of Schedule 55 Finance Act (the “FA”) 2009 and Paragraph 4 of Schedule 55 FA 2009 for the late filing of an Individual Tax Return and the accrual of Daily Penalties for the year ending 5 April 2011.

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2. The First-tier Tribunal directed that the appeal should be stood over until the decision of the Court of Appeal in the case of *Donaldson v Commissioners for Her Majesty’s Revenue and Customs [2016] EWCA Civ. 761* (the “Donaldson case”) was finalised. Thereafter, the Supreme Court refused to permit any further appeal in the Donaldson case and accordingly, the Appellant’s appeal was listed for determination.

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3. On 21 March 2017 the Tribunal decided that the appeal was unsuccessful.

Background Facts

4. For the year ending 5 April 2011 the Appellant was required to file a return either electronically by 31 January 2012 or non-electronically by 31 October 2011. The Appellant chose to file electronically. The return was received by HMRC on 6 August 2012 and processed the same day.

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5. As the return was not received by the filing date HMRC issued a notice of penalty assessment on or around 14 February 2012 in the amount of £100.00, the Penalty.

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6. As the return had still not been received by HMRC three months after the penalty date, HMTC issued a notice of daily penalty assessment on or around 7 August 2012 in the sum of £900.00, the Penalties, calculated at the daily rate of £10.00 for 90 days.

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7. The Appellant appealed against both the Penalty and the Penalties to HMRC which rejected the appeal by letter dated 10 September 2012 but, in the same letter, offered a review.

8. The Appellant requested a review which was carried out by HMRC and notified to the Appellant by letter dated 15 November 2012. The conclusion of the review was that the decision of HMRC to impose the Penalty and the Penalties was confirmed.

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9. By Notice of Appeal dated 3 December 2012 the Appellant appealed the Penalty and the Penalties to HM Courts & Tribunals Service. The Appellant accepted that the return had been filed late but claimed that there was a reasonable excuse.

Findings of Fact.

10. That the Appellant had filed the return late.
11. That HMRC had correctly calculated the Penalty and the Penalties.
12. That the Appellant had failed to establish a reasonable excuse.
13. That HMRC had made a decision required by Paragraph 4 (1) (b) of Schedule
5 55 FA 2009 to charge the Penalties.
14. That HMRC had given notice required under Paragraph 4 (1) (c) of Schedule 55
FA 2009 specifying the date from which the Penalties were payable.
15. That HMRC had failed to specify the period in respect of which the Penalties
10 were assessed in the notice of assessment required under Paragraph 18 of Schedule 55
FA 2009. Despite that omission of the correct period, for which the Penalties had been
assessed in the notice of assessment, the validity on the notice was not affected.
16. That the Penalty and the Penalties were not criminal in nature for the purpose of
Article 6 of the European Convention on Human Rights (the “ ECHR.”)
17. That the Penalty and the Penalties were not disproportionate and the penalty
15 regime was proportionate in its aim.
18. That there were no special circumstance which would support a Special
Reduction under Paragraph 16 of Schedule 55 FA 2009.

The Legislation

19. Taxes Management Act 1970 section 8.
- 20 20. Schedule 55 FA 2009 Paragraphs 1, 3, 4, 5, 6(1), 6(5), 16, 18, 20, 21, 22 and 23.

Reasons for the Decision

21. The return was filed electronically on 17 July 2012 when the correct date for
electronic submission was 31 January 2012.
22. As the return was late the Penalty was calculated under Paragraph 3 of Schedule
25 55 FA 2009 which specified the amount as £100.00. The Penalties were calculated
under Paragraph 4 of Schedule 55 FA 2009 at £10.00 per day. The return was filed 90
days late.
23. The Appellant claimed a reasonable excuse. She had applied for a unique
30 reference number”(the ”UTR”) online before the deadline but did not receive one in
time. On three occasions she received the unique reference number in her husband’s
name.
24. The Appellant had started in self-employment on 10 April 2008. She had
successfully submitted both her self-assessment returns before the deadlines in tax
years 2008-2009 and 2009-2010. The Tribunal decided she should have been aware of

her obligations under self-assessment. Filing the tax return by the due date was her responsibility and imposed a strict duty on her to meet the legal deadlines.

25. The only contact with the Appellant about her UTR that HMRC had in its records was on 24 July 2012 which was after the due date. There was no evidence to support the Appellant's claim that she had received three UTR's in her husband's name so the Tribunal could only note the matter and place no weight upon the claim.

26. The Tribunal was bound to follow the decision in the Donaldson case in respect of the decision of HMRC to impose the Penalties and the giving of notice in respect of the latter and similarly relied on the Donaldson case on the issue of HMRC's omission to specify the relevant period.

27. The failure to file the return was not criminal in nature but administrative and no proof of qualitative misconduct was required. The Penalty and the Penalties were simply a means of securing the production of timely returns. So Article 6 of the ECHR did not apply.

28. The Penalties were neither harsh nor plainly unfair. The Tribunal relied on *International Roth GmbH v SSHD [2002] EWCA Civ. 158* in reaching this decision.

29. There were no exceptional, abnormal or unusable circumstances nor was there something out of the ordinary run of events to justify a Special Reduction. The Appellant had merely failed to request a UTR in time which meant that the return was filed late.

31 For the reasons given the appeal was not successful. The Appellant must pay to HMRC the sum of 1000.00

32 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.

**JENNIFER A TRIGGER
TRIBUNAL JUDGE**

RELEASE DATE: 30 MARCH 2017

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