



TC05746

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Appeal number: TC/2013/02513

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Income Tax - Individual Tax Return - Late filing Penalty, Daily Penalties, 6 Month Penalty and 12 Month penalty- Reasonable Excuse - No- Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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MRS ANITA MARIA THERESE AGGARWAL Appellant

- and -

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

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TRIBUNAL: JUDGE JENNIFER A TRIGGER

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The Tribunal determined the appeal on 4 April 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 10 April 2013 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 2 February 2017.

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DECISION

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Introduction

1. This is an appeal against a Late Filing Penalty (the “Penalty”), Daily Penalties (the “Penalties”) a 6 Month Penalty (the “6 Month Penalty”) and a 12 Month Penalty (the “12 Month Penalty”) imposed under Paragraph 3, Paragraph 4, Paragraph 5 and Paragraph 6 of Schedule 55 Finance Act (the “FA”) 2009 for the late filing of an Individual Tax Return, for the year ending 5 April 2011.

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.

3. On 4 April 2017 the Tribunal decided that the appeal was unsuccessful.

Background Facts

4. For the year ending 5 April 2011 Mrs Anita Maria Therese Aggarwal (the “Appellant”), was required to file a return either electronically by 31 January 2012 or non-electronically by 31 October 2011. As at 31 August 2016 the Appellant had not filed a return.

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.

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.

7. As the return had still not been received by HMRC 6 months after the penalty date, HMRC issued a notice of penalty assessment on or around 7 August 2012 in the amount of £300.00, the 6 Month Penalty.

8. As the return had still had not been received by HMRC 12 months after the penalty date, HMRC issued a notice of penalty assessment on or around 19 February 2013 in the amount of £300.00, the 12 Month Penalty.

9. The Appellant appealed against the Penalty, the Penalties, the 6 Month Penalty and the 12 Month Penalty to HMRC which rejected the appeal by letter dated 10 September 2012 because the Appellant had not submitted the return.

10. On 2 November 2012 and again 11 January 2013 HMRC sent reminders to the Appellant to confirm that no appeal could be considered until the return had been submitted.

5 11. The Appellant requested a review which was carried out by HMRC and notified to the Appellant by letter dated 14 March 2013. The conclusion of the review was that the decision of HMRC to impose the Penalty, the Penalties, the 6 Month Penalty and the 12 Month Penalty was confirmed.

10 12. By Notice of Appeal dated 10 April 2013 the Appellant appealed the Penalty, the Penalties, the 6 Month Penalty and the 12 Month Penalty to HM Courts & Tribunals Service.

13. The Appellant's Case

14. The Appellant was unable to control her business and her private affairs immediately after her Mother's death 8 September 2011 and for some time thereafter.

15 15. The Appellant's Mother suffered with cancer and the Appellant had taken time off work to care for her.

16. The Appellant suggested that if she filed her tax return by 31 August 2013 HMRC should waive all the penalties imposed.

17. The Appellant was unsure whether she had deposited monies with HMRC in relation to the disputed tax.

20 18. She asked that HMRC show her compassion as the Appellant had paid tax unlike some large corporations.

Findings of Fact.

19. That the Appellant had filed the return late.

25 20. That HMRC had correctly calculated the Penalty, the Penalties the 6 Month Penalty and the 12 Month Penalty.

21. That the Appellant had failed to establish a reasonable excuse.

22. That HMRC had made a decision required by Paragraph 4 (1) (b) of Schedule 55 FA 2009 to charge the Penalties.

30 23. 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.

24. That HMRC had failed to specify the period in respect of which the Penalties 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.

25. That the Penalty, the Penalties, the 6 month Penalty and the 12 Month Penalty were not criminal in nature for the purpose of Article 6 of the European Convention on Human Rights (the “ ECHR.”)

5 26. That the Penalty, the Penalties, the 6 Month Penalty and the 12 Month Penalty were not disproportionate and that the penalty regime was proportionate in its aim.

27. That there were no special circumstance which would support a Special Reduction under Paragraph 16 of Schedule 55 FA 2009.

The Legislation

28. Taxes Management Act 1970 section 8.

10 29. Schedule 55 FA 2009 Paragraphs 1, 3, 4, 5, 6(1), 6(5), 16, 18, 20, 21, 22 and 23.

Reasons for the Decision

30. The Appellant had failed to file the return by the due date.

31. The Appellant had not shown that there was a reasonable excuse.

15 32. The Appellant had been in the self- assessment regime since 1999-2000 because she had income from property. No returns have been submitted since 2004-2005. No explanation has been provided by the Appellant for this omission. Furthermore, she had registered as self- employed, as a property management agent, on October 2005 from 06 October 2005.

20 33. No medical evidence was provided by the Appellant to confirm that she was suffering with “ emotional turmoil ” following the death of her mother. The Tribunal did not know the extent of her bereavement distress. The Appellant made no mention of medication, counselling, receipt of sick pay or benefit.

25 34. In the absence of any corroborative evidence, medical or otherwise, the Tribunal decided, on the balance of probabilities, that the Appellant had not demonstrated a reasonable excuse. The Tribunal took into account, also, the fact that nearly 5 years after the death of her mother the Appellant had still not filed a return and that no return had been filed in the intervening years from 2004 - 2005.

30 35. The fact that the Appellant may have deposited money in relation to the disputed tax is not a reasonable excuse for failure to file a return for 2010-2011 it is irrelevant because the appeal relates to penalties for not filing a self – assessment tax return. Likewise, the tax affairs of other tax payers is also.

35 36. As the return was late the Penalty was calculated under Paragraph 3 of Schedule 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. The 6 Month Penalty was calculated under Paragraph 5 of Schedule 55 FA

2009 at £300.00. The 12 Month Penalty under paragraph 6 of Schedule 55 FA 2009 at £300.00.

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

38. The failure to file the return was not criminal in nature but administrative and no proof of qualitative misconduct was required. The Penalty, the Penalties, the 6 Month Penalty and the 12 Month Penalty were simply a means of securing the production of timely returns. So Article 6 of the ECHR did not apply.

39. 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.

There were no exceptional, abnormal or unusable circumstances nor was there something out of the ordinary run of events to justify a Special Reduction.

31 For the reasons given the appeal was not successful. The Appellant must pay to HMRC the sum of £1600.00.

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: 5 APRIL 2017