



TC05765

Appeal number: TC/2016/04399

INCOME TAX – late filing penalties – late appeal to the Tribunal – whether a good reason for the late appeal shown – held, no – extension of time for appealing not granted

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CIRIACO DE LUCA

Appellant

- and -

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

TRIBUNAL: JUDGE JOHN WALTERS QC

Sitting in public at the Royal Courts of Justice, London on 27 March 2017

George Achillea FCCA, for the Appellant

There was no appearance by or on behalf of the Respondents

DECISION

1. The hearing of this appeal was listed for the afternoon of 27 March 2017. In the morning, the Tribunal was informed that Ms Kate Murphy, the litigator involved in the appeal for the Respondents (“HMRC”) and their intended representative, had unfortunately missed the flight from Belfast and had been unable to get another. She apologised for her absence at the hearing and confirmed that apology in an email to the Tribunal. She did not ask that the hearing should not proceed in her absence.

2. When the Appellant, Mr de Luca, and his representative, Mr Achillea attended at the hearing, they had not been told that there would be no representation on behalf of HMRC. There was no such representation, HMRC not having arranged for a different representative to be present.

3. I had before me a file of papers relevant to the case which had been prepared by HMRC, which included correspondence, extracts of relevant legislation and HMRC’s Statement of Case.

4. I asked Mr Achillea whether he would prefer the hearing of the appeal to proceed in the absence of any representation for HMRC. He was not insistent, but he did confirm that he and his client had prepared for the appeal and were in a position to proceed.

5. In those circumstances, I decided to proceed with the hearing, considering that it was in the interests of justice to do so. (Rule 33 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 refers.)

6. The substantive issue in the appeal is whether or not Mr de Luca has a reasonable excuse for the late filing of tax returns for the years 2010/2011, 2011/2012, 2012/2013 and 2013/2014. The returns, which were due to be filed not later than 31 January following the relative year of assessment were in fact filed (as to the return for 2010/2011) on 6 April 2016 and (as to the returns for 2011/2012, 2012/2013 and 2013/2014) on 3 March 2016.

7. There is also an issue as to whether I should allow a late appeal to be made. Apparently, Mr de Luca appealed to HMRC on 31 March 2016. His Notice of Appeal to the Tribunal is dated 16 August 2016. The decisions were, according to a Notice dated 1 November 2016 served by HMRC on the Tribunal, ‘issued to [Mr de Luca] on various dates during 2012, 2013, 2014, 2015 and 2016’. This is confirmed by the Statement of Case in my papers, which gives the date of the latest decision (to impose a 12 month late filing penalty of £300 in respect of 2013/2014) as 23 February 2016.

8. All the appeals were therefore made out of time. The appeal against the latest decision was made some 4½ months out of time. The appeals against the earlier decisions were made between 11 months and well over 4 years out of time.

9. The Court of Appeal in *Revenue and Customs Commissioners v BPP Holdings Ltd and others* [2016] EWCA Civ 121, [2016] STC 841 has laid down that a strict

approach to the enforcement of time limits should be adopted by this Tribunal. The only factor which could, in my view, persuade the Tribunal to allow a late appeal would be if it found that Mr de Luca had a good reason for the delay.

5 10. Mr Achillea in argument concentrated on the issue of whether or not Mr de Luca had a reasonable excuse for the late filing of the tax returns. The case advanced on this issue largely duplicates the only case which could be made to the effect that Mr de Luca had a good reason for the delay in appealing to this Tribunal.

10 11. That case was as follows. First, that Mr de Luca did not earn enough (in his business as an ice-cream salesman) to pay tax in any of the years from 2007 – this appears to be accepted by HMRC. Mr Achillea told me that Mr de Luca had been advised that he would not have to pay tax. Secondly, that, as an Italian working part time, he was not aware that he had to complete tax returns – although he now accepts that he had that obligation. Thirdly, that his reading in English is not good and he did not open letters sent to him by HMRC. Fourthly, that the charges would put a severe financial burden on him – the total amount of penalties appealed against is £6,400. 15 Fifthly, that his previous financial adviser had passed away and that he had no-one to take letters to and did not want to burden his family.

20 12. Mr Achillea laid stress on the fact that HMRC had made no other attempt to contact Mr de Luca other than by sending him letters. The matter was brought to a head when, in January 2016, eventually someone from HMRC ‘did come knocking on the door’ and brought the matter to Mr de Luca’s attention. This led to his eventually filing the missing tax returns.

25 13. I was shown HMRC’s file record of their dealings with Mr de Luca over the period from 2009 to 2016. There is a note of a telephone call being made to ‘tp other’ – which I take to be an abbreviation for ‘taxpayer’ – on 9 June 2011. At the hearing, Mr de Luca, through Mr Achillea said that he had never received a telephone message and that there had been no follow-up by HMRC.

30 14. I was told that if HMRC’s debt collection agencies had got in touch with him at an early stage, the matter would have been rectified, tax returns would have been filed and the imposition of penalties could have been avoided.

35 15. Although I accept that Mr de Luca could, if he had put his mind to it, have filed nil tax returns in time for each year, I am not persuaded that he had a good reason or reasonable excuse for his failure to do so. The responsibility to comply with the law regarding the filing of tax returns is that of the taxpayer – even where there is no tax to pay. That responsibility cannot be shifted to HMRC on the basis that letters sent by them to update Mr de Luca on the situation were never opened by him.

40 16. My decision therefore is to refuse to allow late appeals against the penalties in issue. I add that, even if I had allowed such late appeals, I would have found that Mr de Luca had shown no reasonable excuse for his non-compliance and would have dismissed the appeals.

17. In closing, I express the view that the imposition of penalties amounting to £6,400 in relation to the non-submission of tax returns showing no tax to pay is highly likely to be very onerous to Mr de Luca. Although I do not find that the penalties are unfair or disproportionate, I do consider that HMRC should reconsider the case with a view to mitigating the penalties as a matter of administrative concession. I hope that can be done.

18. 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.

**JOHN WALTERS QC
TRIBUNAL JUDGE**

RELEASE DATE: 31 MARCH 2017