



TC05861

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Appeal number: TC/2013/06652

*Income Tax - Individual Tax Return – Late Filing Penalty - Daily Penalties
- Reasonable Excuse - No- Appeal dismissed*

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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MR MUHAMMAD UMAR

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 24 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 23 September 2013 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 16 February 2017.**

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DECISION

5 Introduction

1. This is an appeal against a Late Filing Penalty (the “Penalty”) and Daily Penalties (the ”Penalties”) imposed under Paragraphs 3 and 4 of Schedule 55 Finance Act (the “FA”) 2009 for the late filing of an Individual Tax Return for the tax year
10 ending 5 April 2012.

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
15 the Donaldson case and accordingly, the Appellant’s appeal was listed for determination.

3. On 24 April 2017 the Tribunal decided that the appeal was unsuccessful.

Background Facts

4. For the year ending 5 April 2012 Mr Mohammed Umar (the “Appellant”) was
20 required to file a return either electronically by 31 January 2013 or non-electronically by 31 October 2012. The Appellant chose to file electronically. The return was received by HMRC on 20 June 2013.

5. As the return was not received by the filing date HMRC issued a notice of penalty assessment on or around 12 February 2013 in the amount of £100.00, the
25 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 25 June 2013 in the sum of £510.00, the Penalties, calculated at the daily rate of £10.00 for 51 days.

7. The Appellant appealed to HMRC against the Penalty and Penalties to HMRC
30 on 3 July 2013. The appeal was rejected by letter dated 16 July 2013 but a review was offered. On 29 July 2013 the Appellant requested a review. The review was rejected by letter dated 13 September 2013 from HMRC.

8. On 23 September 2013 the Appellant lodged a Notice of Appeal to HM Courts
35 and Tribunal Service.

The Appellant’s Case

9. The Appellant accepted that the return had been filed late but claimed there was a reasonable excuse for the late filing.

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.
- 5 13. That HMRC had made a decision required by Paragraph 4 (1) (b) of Schedule 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.
- 10 15. 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.
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.”)
- 15 17. That the Penalty and the Penalties were not disproportionate and the penalty 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

- 20 19. Taxes Management Act 1970 section 8.
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 20 June 2013 when the correct date for electronic submission was 31 January 2013.
- 25 22. 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 £510.00. This was assessed at £10.00 per day and the return was filed 51 days late.
- 30 23. The Appellant claimed that the 2011-2012 non-electronic return had been filed in June 2012, which could be confirmed by his accountant.
24. That his net income for 2011-2012 was £4,914.00

25. That the Penalty and the Penalties would cause serious financial hardship as they amounted to more than 25% of his profits for the year 2011-2012.

26. That his human rights were breached.

27. The Tribunal did not accept that these reasons amounted a reasonable excuse.
5 There were no unusual or exceptional circumstances nor was there any unforeseen event.

28. The Appellant had been required to file a tax return since 2007-2008 and had submitted electronic returns from that tax year. He would, in the opinion of the Tribunal, be aware of the filing deadlines and the penalty regime as he had been
10 charged a late penalty for tax year 2007-2008. On that occasion, the was nil as the tax regime, at that time, did not recover a penalty where there was no tax liability. The new tax regime was introduced in tax year 2010-2011 from then onwards a penalty was charged even where there was no tax liability.

29. The Appellant did not dispute that he received from HMRC a reminder in
15 December 2012, which would have alerted the Appellant to the fact that HMRC had not received the paper tax return posted in June 2012.

30. A late filing penalty notice was served on the Appellant on 12 February 2013 and a 30 day daily penalty reminder issued to him on 4 June 2013. The Appellant did not dispute that he received either the notice or the reminder. These documents would
20 have brought to the attention of the Appellant the fact that the paper return, filed in June 2012, had not been received by HMRC, in the opinion of the Tribunal.

31. Furthermore, HMRC has no record of a paper tax return for tax year 2010-2011.

32. The Tribunal decided on the balances that the Appellant had not filed a paper return for tax year 2010-2011

25 33. 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, similarly the Tribunal relied on the Donaldson case on the issue of HMRC's omission to specify the relevant period.

34. The failure to file the return was not criminal in nature but administrative and
30 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.

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

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

37 For the reasons given the Appellant must to HMRC £610.00.

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.

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**JENNIFER A TRIGGER
TRIBUNAL JUDGE**

RELEASE DATE: 11 MAY 2017

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