



TC05907

Appeal number: TC/2017/02098

VALUE ADDED TAX – default surcharges for failure to file tax returns – reasonable excuse because of personal circumstances of the Appellant’s director- appeal allowed in part.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ABSS CONSULTING SERVICES LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S
REVENUE & CUSTOMS**

Respondents

TRIBUNAL: JUDGE TONY BEARE

**Sitting in public at Fox Court, 30 Brooke Street, London EC1N 7RS ON 4 May
2017**

Mr S Danda, director of the Appellant, appeared for the Appellant

**Mr T Nicholson, Officer of HM Revenue and Customs, appeared for the
Respondents**

DECISION

1. This appeal concerns the imposition of default surcharges for failures by the Appellant to file its VAT returns on time and whether the Appellant had a reasonable
5 excuse for those failures.

2. The Appellant submitted its notice of appeal late – it should have appealed within 30 days after the date of HMRC’s review decision of 7 December 2016 but its appeal was not submitted until 24 February 2017. Nevertheless, the Respondents did not object to the late notice and I was content for the appeal to proceed.

10 3. At the time of the hearing, the Respondents had issued surcharge liability notices and related assessments in relation to each VAT period from and including the VAT period ending 01/14 to and including the VAT period ending 04/16. In the course of the hearing, I invited the Respondents to reconsider their position and clarify certain issues and their response to that following the hearing has been to
15 withdraw the surcharge liability notices for the VAT periods ending 01/14 and 07/14, with the result that the default surcharge assessments for the VAT periods ending 04/14, 10/14, 01/15 and 04/15 have been amended. However, the Respondents continue to maintain that the Appellant had no reasonable excuse for its failure to file its VAT returns in respect of all of the VAT periods covered by the original
20 assessments apart from the VAT periods ending 01/14 and 07/14.

4. The Appellant contends that it has a reasonable excuse for its failure to file its VAT returns in respect of all of the relevant VAT periods because Mr Danda, the principal director of the company, was under considerable strain throughout those VAT periods as a result of his personal circumstances. These were as follows:-

- 25 (a) His two brothers suffered a car accident in July 2013 which resulted in one brother’s dying immediately from his injuries and the other spending 6 months in a coma before passing away;
- (b) As the only remaining child in his family, this gave rise to significant personal responsibilities and burdens in relation to his diabetic parents who live abroad;
- 30 (c) His wife gave birth to a premature baby by caesarean section in June 2014 and this resulted in the hospitalisation of both his wife and his child for a period of 6 months; and
- (d) Given the above circumstances, he had relied solely on the Appellant’s accountants to deal with the Appellant’s VAT affairs.

35 5. It is well established that a taxpayer does not have a reasonable excuse solely because it relied on a third party to comply with its obligations under the tax legislation. However, that is not the primary contention of the Appellant in this case. Instead, the Appellant is alleging that the personal circumstances of its principal director is the main reason for the relevant defaults. The Respondents
40 have accepted this to be the case in relation to the VAT periods ending 01/14

and 07/14 but maintain that there is no reasonable excuse for the defaults in relation to the other VAT periods in question.

6. I must confess that I find the Respondents' position in this case to be somewhat inconsistent. In the context of the penalties charged under Schedule 24 of the Finance Act 2007, they have accepted that the Appellant had a reasonable excuse for the late filing of returns to and including the VAT period ending 10/15 and yet they continue to maintain in this context that the very same circumstances do not constitute a reasonable excuse for the failure to file returns in respect of the VAT periods ending 10/14 and thereafter. In addition, they have accepted in this context that the Appellant had a reasonable excuse for its failure to file returns in respect of the VAT periods ending 01/14 and 07/14 but not in respect of the VAT period ending 04/14. This is hard to follow given that the nature of the events which are alleged to comprise the reasonable excuse are not such as to be so easily time-compartmentalised in this way.

7. On the other hand, although the circumstances described by Mr Danda are horrific and deserving of every sympathy, the Appellant was still continuing to trade over the period in question. There is also a case for saying that the defaults continued for somewhat longer than they ought to have done. According to the timeline provided by Mr Danda at the hearing, his brothers' accident was in July 2013, his second brother died in February 2014, his child was born in June 2014 and there was then a period of six months in which his wife and child were hospitalised.

8. Given this timeline, I believe that the Respondents are being a little harsh in denying that there was a reasonable excuse for the defaults which occurred in respect of the VAT periods ending 04/14, 10/14 and 01/15. However, I consider that Mr Danda has not substantiated that the Appellant had a reasonable excuse for the defaults which occurred in respect of the VAT periods ending 04/15, 07/15, 10/15, 01/16 and 04/16.

9. I have reached the conclusions set out in the above paragraph because I think that it is reasonable to conclude that Mr Danda was in a state of some emotional distress over the whole of 2014 given the events which occurred in 2013 and 2014. However, by the end of the VAT period 04/15, it would have been four months since Mr Danda's wife and child returned from hospital and almost a year since his child was born. Accordingly, I think it is reasonable to conclude that the Appellant did not have a reasonable excuse for its defaults in the VAT period ending 04/15 and the VAT periods ending thereafter.

10. Accordingly, I hold that the schedule of defaults should be revised to reflect the conclusion set out above. That is to say, pursuant to sub-section 59(7) of the Value Added Tax Act 1994, the Appellant should not be liable to any surcharge in respect of the VAT periods ending 04/14, 10/14 or 01/15 and that those VAT periods should not be regarded as periods of default for the purposes of determining the applicable default surcharge in respect of the VAT periods which followed the VAT period ending 01/15. This means that the VAT period ending 04/15 should be regarded as the VAT period of first default, and the surcharges in respect of the VAT periods ending 07/15, 10/15 and 01/16 should be amended so that the rates to be applied in

calculating the default surcharge in respect of those VAT periods are 2%, 5% and 10% respectively instead of 15%. I uphold the 15% default surcharge assessment in respect of the VAT period ending 04/16.

5 11. 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 paragraph 39 of the Tribunal Rules. 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

10 12.

**TONY BEARE
TRIBUNAL JUDGE**

RELEASE DATE: 26 MAY 2017

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