



TC03015

Appeal number: TC/2012/05091

Late P35 Returns for 2009-10 and 2010-11 – Section 98A(2) and (3) TMA 1970 – agent failed to submit return when unwell following the deaths of members of his family – whether reasonable excuse existed throughout period of default – no – appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BBD PET PRODUCTS LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE MICHAEL S CONNELL
PETER WHITEHEAD**

Sitting in public at 35 Vernon Street, Liverpool on 2 August 2013

Mr Philip Speed of Speed Accountancy Services for the Appellant

Mr A J O'Grady, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. This is an appeal by BBD Pet Products Limited (“the Appellant”) against penalties charged under the provisions of s 98A(2) and (3) TMA 1970 in respect of the late submission of the Employer’s P35 Annual Return (“EAR”) for the tax years 2009-10 and 2010-11.

2. Regulation 73(1) of the Income Tax (Pay As You Earn) Regulations 2003 requires an employer to render a completed Employer’s Annual Return for any employee employed during the year. Employers are required to send their Returns to HMRC by 19 May following the tax year end.

3. Interim penalties are charged where a Return remains outstanding after the due date. Penalties are charged at £100 per month for all or part of the month from the due date of the Return until the date it is received.

15 **Background**

4. In respect of the Appellant’s 2009-10 Return, HMRC issued a total of twelve £100 penalties, totalling £1,200 between September 2010 and May 2011. The 2009-10 Return is still outstanding.

5. With regard to the Appellant’s 2010-11 Return, four £300 penalties were issued between September 2011 and May 2012. The Return is still outstanding.

6. The Appellant’s 2011-12 Return has been received by HMRC, but it was submitted one week after the 19 May 2012 deadline and therefore a £100 penalty was issued.

7. The penalties imposed upon the Appellant therefore total £2,500.

8. The Appellant company’s affairs are dealt with by Mr Philip Speed of Speed Accountancy Services who is also the Appellant Company Secretary.

9. No-one from the Appellant Company attended the hearing. Mr Speed attended on its behalf.

The Appellant’s Case

10. Mr Speed said that his father had died in 2009, and in early 2010 his brother died suddenly aged fifty-two from cancer. Mr Speed says that after that he became severely depressed, his life was “in bits” and his work suffered considerably. He says that he has been diagnosed with a serious bowel condition and has been attending hospital regularly. It was due to his state of mind and his own illness that he was not able to deal with the Appellant’s affairs and submission of its EAR. He says that the delays which have happened in this case are not confined to one client alone. Similar delays have occurred in respect of other clients, which he is attempting to resolve.

11. Because Mr Speed was the Company Secretary, notices from HMRC and other public bodies were sent to his home address and not to the Appellant company. The proprietors of the Appellant Company were therefore unaware of the delays in submission of its P35 Returns.

5 12. The Appellant had also been behind with its Corporation Tax Returns. Penalties had been imposed, but in that instance they had, by concession, been waived by HMRC.

10 13. Mr Speed said that he was aware that his failure to attend to the company's obligations rendered him potentially negligent, and that he may be liable to compensate his client for any penalties imposed or losses incurred.

HMRC's case

14. HMRC say that the Appellant Company does not have a reasonable excuse for the late submission of its 2009-10 or 2010-11 Returns. Indeed, both Returns are still outstanding.

15 15. Whilst HMRC have considerable sympathy for Mr Speed's situation, it has to be said that submission of the Appellant Company's P35 Returns was not Mr Speed's responsibility. HMRC's argument is that the Appellant should have checked with Mr Speed to ensure that the Annual Returns had been submitted on time and the Appellant cannot seek to be absolved of its responsibility for the proper submission of the Returns by placing the blame with Mr Speed. The Appellant would have been on notice that the Returns were outstanding because of the issue of penalties.

Conclusion

16. The Tribunal may discharge a penalty if the Appellant can show that it has met the conditions set down by s 118(2) TMA 1970 which states that –

25 "A person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the Tribunal or Office concerned may have allowed; and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased."

30 17. The Tribunal therefore has to decide whether the Appellant had a reasonable excuse for not submitting its 2009-10, 2010-11 and 2011-12 Employer's Annual Returns on time, and if the answer to that question is yes, whether the excuse ceased at any time during the period of default, and if the answer to that question is yes, whether the Return was submitted without unreasonable delay after the excuse had ceased.

18. The law does not define reasonable excuse, but it is normally regarded as an exceptional event beyond a person's control which prevented him from complying with his obligations by a due date. The Appellant must show that the reasonable excuse existed throughout the entire period of default and that it acted promptly in remedying matters immediately the reasonable excuse came to an end.

19. The Tribunal have considerable sympathy for Mr Speed given the events in 2009 and 2010. However, in such circumstances, Mr Speed should have informed his client that he was unable to deal with their affairs. Furthermore, even if a reasonable excuse existed between 2009 and 2011 on the basis that the Appellant company was unaware of the defaults and its agent Mr Speed was in a state of serious depression, it cannot be said that the reasonable excuse continued after April 2012 when Mr Speed submitted an appeal to the Tribunal against the penalties that had been imposed up to that date. As HMRC say, the Returns for 2010-11 and 2011-12 still remain outstanding. The Appellant Company has therefore not shown that a reasonable excuse existed throughout the entire period of the default.

20. Accordingly the Appellant's appeal is dismissed, and the Tribunal confirms the penalties of £1,200 in respect of the year 2009-10, £1,200 in respect of the year 2010-11 and £100 in respect of the year 2011-12.

21. The Appellant Company's appeal is dismissed.

22. 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.

MICHAEL S CONNELL
TRIBUNAL JUDGE

RELEASE DATE: 22 October 2013