



TC03378

Appeal number: TC/2011/08787

Section 98A(2) and (3) Taxes Management Act 1970 - Employer's End of Year P35 return filed late - company had ceased trading - post-cessation filing delegated to agent - whether reasonable excuse - no - appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TUMMY GYM/GYMOPHOBICS HUCKNALL LIMITED Appellant

- and -

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

**TRIBUNAL: JUDGE MICHAEL S CONNELL
MRS MARYVONNE HANDS**

**Sitting in public at Nottingham MJC, Carrington Street, Nottingham on 20
November 2013**

Mr and Mrs Clark as proprietors appeared on behalf of the company

Ms Lisa Taylor, Officer of HM Revenue and Customs, for the Respondents

DECISION

Decision under Appeal

- 5 1. This is an appeal by Tummygym/Gymophobics Hucknall Limited ('the Appellant') against penalties totalling £1,200 imposed for the late submission of the Employer's Annual Return (P35) under s 98A(2) and (3) Taxes Management Act 1970 for the tax year ending 5 April 2010.
- 10 2. An employer has a statutory obligation to make End of Year returns before 20 May following the end of a tax year in accordance with Regulation 73 of the Income Tax (PAYE) Regulations 2003 and paragraph 22 of Schedule 4 of the Social Security (Contributions) Regulation 2001.
- 15 3. In the case of an employer failing to make an End of Year return on time s 98A (2) and (3) Taxes Management Act 1970 provides for a fixed penalty at £100 for each month (or part month) during which the failure continues for each batch (or part batch) of 50 employees. If the failure continues beyond 12 months a penalty can be imposed up to a maximum of the amount outstanding at 19 April i.e. it is a tax geared penalty.

The background facts

- 20 4. (i) The filing date for the Appellant's 2009/10 return was the 19 May 2010.
- (ii) A first interim penalty of £400 for the period 20 May 2010 to 19 September 2010 was issued on 27 September 2010.
- (iii) A second interim penalty of £400 for the period from 20 September 2010 to 19 January 2011 was issued on 24 January 2011.
- 25 (iv) A third and final penalty of £400 for the period 20 January 2011 to 19 May 2011 was issued on 30 May 2011.
5. The Appellant's appeal was submitted on 14 September 2011 and was therefore out of time. However after preliminary submissions by the parties the Tribunal allowed the Appellant to submit a late appeal.
- 30 6. Mrs Clark for the Appellant said that they had not filed the company's end of year P 35 return because they had never received it from HMRC. She said that the return must have been delivered to the Appellant's previous business address in Hucknall, or possibly to their ex-accountants who they relied upon to deal with such matters.
- 35 7. Mrs Clark said that the Appellant ceased trading on 22 August 2009 when they vacated the premises at very short notice. She said that they did not redirect their mail and therefore no mail had been forwarded on to them. She said that they paid their

accountant to “tie up any loose ends” with regard to VAT and PAYE. They did not know that they had to file a P 35.

5 8. They had been trying to have the company struck off the register at Companies House, but because staff were taking proceedings against them for unpaid wages, the striking off had been delayed. She said that they were totally unaware that penalties had been incurred until November 2010, and had been advised by their accountant that because the company had ceased trading and they were applying to have the company struck off the register, a P 35 return was not necessary.

10 9. Finally, Mrs Clark said that the company was effectively insolvent and unable to pay the penalties in any event.

HMRC’s case

15 10. Ms Taylor for HMRC said that the P 35 return had been sent to the address given to HMRC, and that, as telephone records, confirmed there had been at least one telephone conversation with Mrs Clark (in April 2010) when she had telephoned in response to a letter from HMRC dated 26 March 2010 relating to the filing of the P 35.

20 11. Ms Taylor submitted that there was no reasonable excuse throughout the period of default for the late submission of the Employer’s Return She said that negligence or carelessness of a third party does not relieve the employer from their legal obligation to ensure that their return is filed on time. If there was any recourse against the agent for negligent advice, that was a separate matter for the Appellant to take up with the agent.

Conclusion

25 12. There is no definition in law of a reasonable excuse, which is a matter to be considered in the light of all the circumstances of the particular case. A reasonable excuse is normally an unexpected or unusual event, either unforeseeable or beyond a person’s control, which prevents him from complying with an obligation. The proprietors of the Appellant company were aware of the need to file an end of year Employer’s Annual Return by 19 May 2010. They may have been given negligent
30 advice and may also have delegated the task of dealing with the P 35 return and other matters to their agent. However, the responsibility to file the return remained with the Appellant. As HMRC argue, it is established law that a taxpayer must take responsibility for the action or inaction of their agent or representative. HMRC have to be seen to be consistent in their approach to all taxpayers, and in particular those
35 who comply with their obligations

13. Taking all the circumstances into account the Tribunal considered that the penalties of £1,200 had been correctly imposed and dismissed the appeal.

40 14. 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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**MICHAEL S CONNELL
TRIBUNAL JUDGE**

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RELEASE DATE: 24 February 2014