



TC03483

Appeal number: TC/2014/00407

*INCOME TAX - penalty for late submission of Employer's annual return
- whether there was a "reasonable excuse" - no*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

SRI SAI RAM KALP'S PVT LIMITED

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JOANNA LYONS

The Tribunal determined the appeal on 25 March 2014 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 14 January 2014 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 03 February 2014 and the Appellant's Reply dated 26 February 2014.

DECISION

Introduction

- 5 1. This is an appeal against a total penalty of £100 imposed for the late filing of the Employer's Annual return for the tax year 2012-13. The return was due on 19 May 2013 and was filed online on 09 October 2013.
2. Rakesh Wadhwa, of Tax Link accountants, appeals on behalf of the appellant company. ("the company")

The issue

- 10 3. The appellant appeals on the grounds that there was a reasonable excuse for the late filing of the return. HMRC oppose this ground of appeal.

The Law

Obligation to file the return

- 15 4. An employer has an obligation to file an Employer's Annual Return on or before 20 May following the end of the tax year. Regulation 73(1) of the Income Tax (Pay As You Earn) Regulations 2003.

Imposition of penalty

- 20 5. If the return is not filed by the due date a penalty is payable in the sum of £100 per month for a firm with 50 employees or less. Section 98A (2) and (3) of the Taxes Management Act 1970 ("TMA").
6. Where the combined total of tax and NIC is £100 or less HMRC apply a concession and the penalty is limited to a minimum of £100.

Powers of the Tribunal

- 25 7. The Tribunal can set aside the penalty if it has been incorrectly applied.
Section 100B TMA

Reasonable excuse

8. The Tribunal can allow an appeal if the Employer has a "reasonable excuse" for the late submission of the return. Section 118(2) TMA.
- 30 9. In the case of *Rowland v HMRC [2006] STC (SCD) 536* it was decided that "reasonable excuse" was "a matter to be considered in the light of all the circumstances of the particular case".

Delegation to a third party

10. The mere fact that responsibility had been delegated to a third party does not amount to a reasonable excuse. *Westbeach Apparel Uk Ltd v HMRC commissioners [2011] UKFTT 561.*

- 5 11. The Tribunal can look behind act of delegation in order to determine whether the third party, themselves, has a reasonable excuse. *Customs & Excise Commissioners v Steptoe [1992] STC 757*

The Facts

The agreed facts

- 10 12. The Company was due to file an Employer's annual return for the year 2012-13 which was due on 19 May 2013. They delegated the task of filing the return to their agents, Tax Link accountants.

13. In late April 2013 Tax Link installed new software in order to comply with the requirement for Real time information ("RTI"). The migration to new software caused
15 disruption to records including payroll information and reference numbers.

14. The effect of this was that Tax Link were unable to file returns for some of their other clients. However HMRC's records show that some returns were successfully filed by Tax Link.

15. The filing clerk employed by Tax Link submitted a nil return before the due
20 date. This proved to be an error as the company owed Tax and NIC's amounting to £71.76. The clerk has not provided an explanation for the error and has now left the company.

16. HMRC wrote to the company and their agents on 24 July 2013 requesting an
25 explanation for the nil return. No response was received to this letter and on 10 September HMRC wrote a second letter stating that a penalty would be issued.

17. On 23 September HMRC issued a first interim late filing penalty of £400 for the period 20 May 2013 to 19 September 2013.

18. On 09 October 2013 the return was filed showing the correct tax liability.

19. On 14 October, HMRC reduced the penalty to £100 as the tax liability as the tax
30 liability did not exceed £100.

The contested facts

20. Mr Wadhwa states that he did not receive HMRC's letters of 24 July and 10th September.

21. HMRC state that the letters were sent to the correct address of the company and their agents.

Findings of fact

22. I accept that the agents did not receive the letters of 24 July and 10 September as it appears that Tax Link would have responded promptly had they been received.

The Arguments

The Appellant's case

23. Mr Wadhwa submits that there was a reasonable excuse for the late submission of the return due to the computer problems together with the error made by the filing clerk. In support of their case they refer to a file note showing that the clerk had submitted a nil return. They state that it can be inferred from the note that the clerk honestly and genuinely believed that she had entered the correct values when submitting the return.

24. Mr Wadhwa also states that the company did not receive the warning letters and were thereby deprived of the opportunity to rectify the default at an earlier stage.

25. In support of his case Mr Wadhwa relies upon a number of First Tier tribunal decisions in which the Tribunal found there to be a reasonable excuse due to filing errors. In particular he relies upon:

(1) *Consult solutions V Her Majesty's Revenue & Customs [2011] UKFTT 429* in which the Tribunal found that a late return brought about by an internet error was a matter outside the appellant's control.

(2) *HMD Response International V HMRC 2011 UKFTT 472* in which the Tribunal found that a genuine and honest belief by the filing clerk amounted to a reasonable excuse

The Respondent's case

26. HMRC accept that there was a loss of data due to software changes. However they submit that these difficulties did not prevent Tax Link from filing returns for other clients at the relevant time. In support of their case they have provided printouts showing successful receipt of returns filed by Tax Link for the year 2012-13.

27. They refer to a number of decisions of the First Tier Tribunal in which there was found to be no reasonable excuse.

Reasons for decision

Reasonable excuse on the part of the company

28. I accept that the company delegated the task of filing the return to their agents, Tax Link accountants. However delegation to a third party does not, in itself, amount

to a reasonable excuse as the responsibility for filing the return remains with taxpayer. *Westbeach Apparel Uk Ltd (above)*. However I can go on to consider whether Tax Link themselves had a reasonable excuse.

Reasonable excuse on the part of Tax Link

5 29. I accept that Tax Link encountered software difficulties at the relevant time due to the migration to RTI as this evidence has not been challenged. However there is no clear link between the software problems and the filing of the nil return. I note that Tax Link appear to have filed successful returns for other clients at the relevant time.

10 30. I accept that the filing clerk appears to have made a mistake in filing the nil return. However I am not satisfied on the balance of probabilities that the mistake was reasonable in the circumstances because no specific details have been provided as to how the mistake came to be made.

15 31. I accept that Tax Link did not receive HMRC's letters of 24 July and 10 September and did not therefore have the opportunity to rectify the default at an earlier stage. However in this case the earlier rectification of the default would have had no impact on the level of the penalty has been limited to £100.

32. For these reasons I do not find that there was a reasonable excuse for the late submission of the return.

Decision

20 33. There was no reasonable excuse for the failure to submit the Employer's Annual return for the tax year 2012-13.

34. The appeal against the late filing penalty of £100 is dismissed.

Rights of appeal

25 35. This document contains full findings of fact 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)" 30 which accompanies and forms part of this decision notice.

**JOANNA LYONS
TRIBUNAL JUDGE**

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RELEASE DATE: 9 April 2014