



TC03487

Appeal number: TC/2013/09426

INCOME TAX- late appeal against penalties of £2800 imposed for late filing of 2009/10, 2010/11 and 2011/12 employer's annual return.- appellant out of time- appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KENS FOOD AND WINES

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE DAVID S PORTER
MR PHILIP JOLLY**

Sitting in public at Bennett House, Stoke-On-Trent on 31 March 2014

Mrs Jayne Green, of Absolute Accountancy services, for the Appellant

Mrs Helen Roberts, presenting officer, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents.

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DECISION

1. Mrs Jayne Green (Mrs Green) appealed on behalf of Mr H Randhawa Singh and Mrs Bakhshish Kaur Singh, proprietors of the Appellant (Kens Food and Wines), for leave to have the appeal heard out of time. She stated that she had suffered from depression and had felt suicidal at times and that Mr Singh had also been ill and was presently in hospital. Mrs Singh had been left to run the business on her own. The Respondents (HMRC) said that the first penalty had been issued on 27 September 2010 and an appeal had not been lodged by Mrs Green on behalf of Kens Food and Wines until 29 August 2013 and she should have appealed within 30 days from 27 September 2010.

Submissions

2. HMRC issued the following penalties arising from Kens Food and Wines's failure to file its employer's annual returns:

2009-2010

- £400 from 20 May 2010 – 19 September 2010 (issued 27 September 2010)
- £400 from 20 September 2010 – 19 January 2011 (issued 24 January 2011)
- £400 from 20 January 2011 – 19 May 2011 (issued 30 May 2011)

2010-2011

- £400 from 20 May 2011 – 19 September 2011 (issued 26 September 2011)
- £300 from 20 September 2011 – 29 November 2011 (issued 2 December 2011)

2011-2012

- £400 from 20 May 2012 – 19 September 2012 (issued 24 September 2012)
- £500 from 20 September 2012 – 21 January 2013 (issued 24 January 2013)

Totalling £2,800.

3. Judge Porter told Mrs Green that it was necessary for her to explain why there had been such a long delay from the notice of the original penalty on 27 September 2010 to her advising HMRC that Kens Food and Wines wished to appeal on 29 August 2013 and her serving the Notice of Appeal on 9 December 2013.
4. Mrs Green confirmed that she had been instructed to attend the Tribunal on behalf of Kens Food and Wines as neither Mr nor Mrs Singh would be attending. She said that she had filed the first return on line, but that there had

been some difficulty with HMRC's computer. In any event her own computer had crashed, but she believed that she had filed the return. Her computer had failed to back up most of her files and she had not been able to recover the data. She failed to check whether the return had been received by HMRC.

- 5 5. It was not until the notice received on 27 September 2010 that she realised that
the return had not been filed. Unfortunately she had been suffering from
clinical depression at the time and she had had to have a great deal of time off
work. Mr Singh had been, and still was, seriously ill having had a serious head
operation and having spent a great deal of time in hospital. He had
10 subsequently suffered a stroke, which had meant that his wife had had to run
the business. That was why she had not attended the appeal today.
6. Mrs Green was unable to produce to the Tribunal any evidence as to her
medical condition. Nor had she produced any evidence with regards to Mr
Singh's illnesses nor the times at which they occurred.
- 15 7. Mrs Roberts submitted that the filing of the returns was the responsibility of
the employer and she would have expected Mr and Mrs Singh to have
arranged for somebody else to provide the return. Mrs Green indicated that Mr
and Mrs Singh did not wish to make life any more difficult for her and that
they were prepared to wait until she was a little better.

20 **The decision**

8. We have considered the representations and we have decided that Mrs Green
and/or Mr and Mrs Singh should have appealed the matter as soon as they
were able and that it is not a reasonable excuse for such a delay for Mrs Green
to allege that she thought she had filed the return electronically on time and
25 that she had been suffering from depression.
9. She accepted, at the Tribunal, that she thought that there might have been a
problem with the HMRC computer. She confirmed that her own computer had
crashed and that she had lost a great deal of saved information. HMRC advise
businesses of the need to file the annual returns prior to the due date and it is
30 no part of their obligations to notify a business if it fails to file its return on
time. It was not until the notice was sent out on 27 September 2010 raising the
penalty that Mrs Green realised there was a problem.
10. Mrs Green should, in view of the fact that her computer had crashed, made
enquires of HMRC to satisfy herself that the return had been received by it. It
35 was incumbent on Mrs Green or Mr and Mrs Singh to rectify the position or to
explain to HMRC why there would be a delay. An appeal has to be lodged
within 30 days. Without evidence of the times and durations of Mrs Green's
and Mr Singh's alleged illnesses, it is impossible to decide whether there was
a reasonable excuse for the failure to deal with the matter by 27 September
40 2010. There is certainly no reasonable excuse for the period thereafter as it
was open to Mrs Green and/or Mr and Mrs Singh to instruct another

accountant to file the appropriate returns. We therefore dismiss the appeal on the basis that Kens Food and Wines have lodged their appeal too late and without a reasonable excuse.

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 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
10 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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**DAVID S PORTER
TRIBUNAL JUDGE**

RELEASE DATE: 15 April 2014

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