



**TC03825**

**Appeal number: TC/2014/00788**

*PAYE – employer’s annual return – penalty for late submission – whether reasonable excuse*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**JINSUNS LTD t/a VERITY PLUM**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE WDF COVERDALE**

**The Tribunal determined the appeal on 17.07.2014 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 06.02.2014 (with enclosures) and HMRC’s Statement of Case submitted on 13.05.2014 (with enclosures).**

## DECISION

1. The Tribunal admits the late appeal; notwithstanding that it was first made to  
5 the Respondents over thirteen months after the initial Penalty Notice was issued, the appellants evidently had difficulty receiving communications from their agent/employee about the matters in issue.

2. The Tribunal decided that the following Late Filing Penalty Notices, in the total sum of £1,800, were properly issued by the Respondents:

10 **2011-2012**

10.10.2012 £400

28.01.2013 £400

27.05.2013 £400

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**2012-2013**

23.09.2013 £400

20.11.2013 £200

20 3. The appeal is dismissed.

4. The Tribunal found that the filing dates for the Appellant's Employer Annual Returns for the years 2011-2012 and 2012-2013 (forms P35 and P14) were 19.05.2012 and 19.05.2013 respectively. The Returns were filed online on 14.03.2014 and 15.11.2013 respectively i.e. some 22 months and some 6 months late.

25 5. The Tribunal further found that there was no reasonable excuse for the failure to file the Employer Annual Returns on time.

6. The Appellant relied upon the services of a book-keeper to attend to the filing of the Returns. That person was an employee or agent of the Appellant. That person evidently failed to attend to the filing of the Returns in a timely manner. Reliance  
30 upon a third party such as book-keeper or accountant cannot relieve the Appellant of its own obligation to file the Return on time and does not amount to a reasonable excuse. A prudent employer exercising reasonable foresight and due diligence with proper regard to its responsibilities under The Taxes Acts would have had systems in place to ensure that the employee/agent carried out their responsibilities. A prudent  
35 employer would make regular checks on progress and would have been alerted to a problem upon receipt of the Penalty Notices; the problem could then have been addressed at a comparatively early stage.

7. The fact that the Respondents have lost no tax is not a matter that can be taken into account in terms of the imposition of the penalties or the issue of reasonable  
40 excuse. Likewise the fact that all PAYE income tax and national Insurance contributions were paid on a timely basis has no bearing on these matters.

8. Insufficiency of funds is not a reasonable excuse and the viability of the Appellants' business is not an issue that the Tribunal can take into account.

9. In so far as the Appellant complains that the Respondents did not send out early reminders and that the penalties accrued without early notifications from the Respondents these matters do not amount to a reasonable excuse; such arguments were addressed in the case of *HMRC v Hok*, mentioned in paragraph 11 below, and dismissed.

10. The test applied by the Tribunal in considering the matter of reasonable excuse is whether the exercise of reasonable foresight and of due diligence and a proper regard for the fact that the Return would become due on a particular date would not have avoided the default. The facts and chronology of events, set out in the Notice of Appeal and the Respondents' Statement of Case, disclose that such foresight and diligence by the Appellant would have avoided the default.

11. In so far as the Appellant may suggest that the imposition of the penalty is disproportionate, unjust or unfair, those arguments have already been disposed of by the Upper Tribunal in *HMRC v Hok* UKUT 363 (TCC) and *HMRC v Total Technology (Engineering) Limited* UKUT 418 (TCC). In the former it was made clear that the First-tier Tribunal has no jurisdiction to determine the fairness of a penalty imposed by statute. It is plain from a perusal of the latter that a penalty of the magnitude of that imposed in this case could not be described as disproportionate even if the Tribunal had jurisdiction to deal with the issue.

12. 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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**WDF COVERDALE  
TRIBUNAL JUDGE**

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**RELEASE DATE: 22 July 2014**