TC05137

Appeal number: TC/2013/05400

INCOME TAX – Whether reasonable excuse for late submission of individual tax return - No.

FIRST-TIER TRIBUNAL
TAX CHAMBER

JULIE ANNE CLARKE **Appellant**

- and -

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

TRIBUNAL: PRESIDING MEMBER:
PETER R. SHEPPARD FCIS FCIB CTA AIIT

The Tribunal determined the appeal on 23 May 2016 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 7 August 2013, and HMRC's Statement of Case received by the Tribunal on 3 March 2016 with enclosures. The Tribunal wrote to the Appellant on 8 March 2016 indicating that if she wished to reply to HMRC's Statement of Case she should do so within 30 days. No reply was received.

DECISION

1. Introduction

This considers an appeal against a penalty of £100 imposed by the respondents (HMRC) under Paragraph 3 of Schedule 55 Finance Act 2009 for the late filing by the appellant of her individual tax return for the tax year 201 –2012.

2. Legislation

Finance Act 2009 Schedule 55
Taxes Management Act 1970, in particular Section 8(1D)

3. Case law

Crabtree v Hinchcliffe (Inspector of Taxes) [1971] 3 ALL ER 967
Clarks of Hove Ltd v Bakers' Union [1979] All ER 152
Rowland v HMRC [2006] STC (SCD) 536
Anthony Wood t/as Propave v HMRC [2011] UK FTT 136 (TC)

4. Facts

The appellant is a self-employed teacher of ballet. The filing date for an individual tax return is determined by Section 8 (1D) of the Taxes Management Act 1970. In this case in respect of the tax year ended 5 April 2012 HMRC issued a notice to file to the appellant on 6 April 2012. A non-electronic return was required to be submitted by 31 October 2012 or an electronic return by 31 January 2013.

5. In respect of the year 2011-2012 the appellant failed to submit her electronic individual tax return until 9 June 2013. As the return was not submitted by the filing date of 31 January 2013 HMRC issued a Notice of Penalty assessment on or around 14 May 2013 in the amount of £100 which was due to be paid by 20 June 2013.

6. On 20 May 2013 the appellant appealed to HMRC against the penalty on the grounds

- "I worked in Canada from August 2012 to March 2013
- I had to return to Britain in April 2013 as my mother was seriously ill."

7. On or around 11 June 2013 HMRC issued a Notice of Penalty assessment charging additional daily penalties totalling £400. The additional penalty was said to be due by 18 July 2013.

8. On 25 June 2013 the appellant wrote a two page letter to HMRC asking for an explanation of the additional penalties. The details of that letter are not reproduced here for reasons which will become apparent.

9. The appellant paid the penalty of £100 on 18 June 2013 but on 20 June 2013 HMRC suspended the £100 penalty. Then on 16 July 2013 the appellant paid a further sum of £300 to clear the balance then due to HMRC.

10. On 7 August 2013 the appellant appealed to the Tax Tribunal against the penalties she had paid totalling £400.

11. On 30 November 2015 HMRC wrote to the appellant. Included in that letter was the following:

"I am currently reviewing your appeal against the 2011-2012 late filing penalties charged of £500. I have decided in the circumstances of your case to cancel the Daily Penalty charged of £400. However I believe the Late Filing Penalty of £100 has been correctly charged and still applies.

Please let me know if you accept the late Filing Penalty of £100 or if you wish to continue with your appeal to Tribunal Services."

12. In their statement of case HMRC report that on 7 December 2015 they received a telephone call from the appellant in which she confirmed that she wished to take her appeal against the £100 late filing penalty to the Tribunal.

13. **Appellant's submissions**

In the Notice of Appeal dated 7 August 2013 the appellant gives the following grounds of appeal

"I totally agree that I was late in filling in my tax return, but under my circumstances I just feel £400 is a very big fine. I wasn't even earning enough to pay any tax. I could barely pay my rent. I was also told on the phone on 23rd June that my £100 fine was an accumulation of the daily penalty of £10 per day. I was also informed on 5th June that my penalty was being postponed, then came another bill for £300.

I would understand a £100 penalty fine, but £400, when I am not even earning enough to pay tax, & wasn't in G.B. & had to leave my job in haste (from Canada) & come back to G.B. with a suitcase to care for my very ill mother."

14. **HMRC's submissions**

HMRC say that the appellant has not given any reason why she did not complete and submit her 2011-2012 tax return during the period 6 April 2012 to the date she left for Canada in August 2012.

15. HMRC observe that the appellant agrees that she was late in filing her return and would understand a £100 penalty.

16. HMRC say that they conducted a review and on reconsideration of the daily penalty of £400 decided to cancel it. They believe the £100 late filing penalty to have been charged correctly.

17. HMRC have considered special reduction under paragraph 16 Schedule 55 of the Finance Act 2009. They say special circumstances must be "exceptional, abnormal or unusual" *(Crabtree v Hinchcliffe)* or "something out of the ordinary run of events" *(Clarks of Hove Ltd v Bakers' Union).* In their view working abroad does not constitute a special circumstance and there are no other special circumstances which would allow them to reduce the penalty.

18. **Tribunal's Observations**

The Tribunal agrees with HMRC that it is the appellant's responsibility to submit returns on time. The return for the period 2011-2012 was due to be submitted by 31 January 2013, but it was submitted late on 9 June 2013. A penalty of £100 is therefore due unless the appellant can establish a reasonable excuse for the delay as referred to in Paragraph 23(1) Schedule 55 Finance Act 2009. A reasonable excuse is normally an unexpected or unusual event that is unforeseeable or beyond the taxpayer's control, and which prevents them from complying with their obligation to file on time.

19. The appellant has offered no explanation of why she submitted her return late except perhaps that she was working in Canada and unexpectedly having to return from there to care for her seriously ill mother.

20. Working in Canada is not an unexpected or unforeseen event that would establish a reasonable excuse. The appellant is responsible for meeting the deadline for filing her tax return. Unfortunately it appears that in her preparations to take up employment in Canada the appellant overlooked the need to file her tax return before she left the country in August 2012. She also did not make that omission good by filing a return electronically by the filing date of 31 January 2013.

21. The appellant returned to the UK in haste in March 2013 to attend to her sick mother. By that time she had already missed the date for submission of her tax return. Therefore the unexpected need to return to the UK in March 2013 to attend to her sick mother cannot establish a reasonable excuse for the appellant's failure to submit her tax return by 31 January 2013.

22. The Tribunal notes that the appellant agrees that she was late in filing her return and would understand a £100 penalty. As the £400 Daily Penalties were cancelled by HMRC it is difficult to understand why she has continued with the appeal.

22. Paragraph 16(1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there are any special circumstances in this case which would allow them to reduce the penalty and have concluded there are none. They comment that they consider that working abroad is not a special circumstance. In the circumstances of this case where the appellant went abroad some four months after the end of the tax year the Tribunal sees no reason to disagree.

23. HMRC has applied the late filing penalty in accordance with legislation. The appellant has not established a reasonable excuse for the late submission of her

individual tax return for the period 2011-2012. There are no special circumstances to allow reduction of the penalty. Therefore the appeal against the late filing penalty of £100 is dismissed.

24. 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.

PETER R SHEPPARD

TRIBUNAL JUDGE
RELEASE DATE: 2 JUNE 2016