[2017] UKFTT 263 (TC)

TC05742

Appeal number: TC/2013/01620

Income Tax - Individual Tax Return - Late filing Penalty and Daily Penalties - Reasonable Excuse - No- Appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

COLIN STEWART **Appellant**

- and -

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

TRIBUNAL: JUDGE JENNIFER A TRIGGER

The Tribunal determined the appeal on 21 March 2017 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 12 January 2013 and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 31 January 2017.

Decision

Introduction

1. This is an appeal against a Late Filing Penalty (the "Penalty") and Daily Penalties (the "Penalties") imposed under Paragraph 3 of Schedule 55 Finance Act (the "FA") 2009 and Paragraph 4 of Schedule 55 FA 2009 for the late filing of an Individual Tax Return and the accrual of Daily Penalties for the year ending 5 April 2011.

2. The First-tier Tribunal directed that the appeal should be stood over until the decision of the Court of Appeal in the case of *Donaldson v Commissioners for Her Majesty's Revenue and Customs [2016] EWCA Civ. 761* (the "Donaldson case") was finalised. Thereafter, the Supreme Court refused to permit any further appeal in the Donaldson case and accordingly, the Appellant's appeal was listed for determination.

3. On 20 March 2017 the Tribunal decided that the appeal was unsuccessful.

Background Facts

4. For the year ending 5 April 2011 the Appellant was required to file a return either electronically by 31 January 2012 or non-electronically by 31 October 2011. The Appellant chose to file electronically. The return was received by HMRC on 17 July 2012 and processed the same day.

5. As the return was not received by the filing date HMRC issued a notice of penalty assessment on or around 14 February 2012 in the amount of £100.00, the Penalty.

6. As the return had still not been received by HMRC three months after the penalty date, HMTC issued a notice of daily penalty assessment on or around 17 July 2012 in the sum of £780.00, the Penalties, calculated at the daily rate of £10.00 for 78 days.

7. The Appellant appealed against both the Penalty and the Penalties to HMRC which rejected the appeal by letter dated 18 September 2012 but, in the same letter, offered a review.

8. The Appellant requested a review which was carried out by HMRC and notified to the Appellant by letter dated 14 December 2012. The conclusion of the review was that the decision of HMRC to impose the Penalty and the Penalties was confirmed.

9. By Notice of Appeal dated 12 January 2013 the Appellant appealed the Penalty and the Penalties to HM Courts &Tribunals Service. The Appellant accepted that the return had been filed late but claimed that there was a reasonable excuse.

Findings of Fact.

10. That the Appellant had filed the return late.

11. That HMRC had correctly calculated the Penalty and the Penalties.

12. That the Appellant had failed to establish a reasonable excuse.

13. That HMRC had made a decision required by Paragraph 4 (1) (b) of Schedule 55 FA 2009 to charge the Penalties.

14. That HMRC had given notice required under Paragraph 4 (1) (c) of Schedule 55 FA 2009 specifying the date from which the Penalties were payable.

15. That HMRC had failed to specify the period in respect of which the Penalties were assessed in the notice of assessment required under Paragraph 18 of Schedule 55 FA 2009. Despite that omission of the correct period, for which the Penalties had been assessed in the notice of assessment, the validity on the notice was not affected.

16. That the Penalty and the Penalties were not criminal in nature for the purpose of Article 6 of the European Convention on Human Rights (the " ECHR.")

17. That the Penalty and the Penalties were not disproportionate and the penalty regime was proportionate in its aim.

18. That there were no special circumstance which would support a Special Reduction under Paragraph 16 of Schedule 55 FA 2009.

The Legislation

19. Taxes Management Act 1970 section 8.

20. Schedule 55 FA 2009 Paragraphs 1, 3, 4, 5, 6(1), 6(5), 16, 18, 20, 21, 22 and 23.

Reasons for the Decision

21. The return was filed electronically on 17 July 2012 when the correct date for electronic submission was 31 January 2012.

22. As the return was late the Penalty was calculated under Paragraph 3 of Schedule 55 FA 2009 which specified the amount as £100.00. The Penalties were calculated under Paragraph 4 of Schedule 55 FA 2009 at £10.00 per day. The return was filed 78 days late.

23. The Appellant claimed as a reasonable excuse that he relied on his wife to manage all his financial affairs. It was she who had dealt with the accountant for the previous three years. In May 2012, whilst at home due to ill health, the Appellant had received a visit from bailiffs authorised to seize goods. At that time the Appellant discovered that his wife had not paid the mortgage instalments, the utility bills and the

accountant's fees and that she had been with-holding and intercepting the household mail and telephone calls.

24. The FA 2009 Schedule 55 Paragraph 23 specifically excludes as reasonable excuse reliance on another person to do anything, unless the person took reasonable care to avoid the failure.

25. The Appellant produced no supporting evidence of the claimed reasonable excuse, so that the Tribunal could place little reliance on it. In addition the Tribunal could not ascertain whether the Appellant took any reasonable steps to avoid the late filing and the accrual of the Penalties.

26. Furthermore, the Notice of Appeal recorded that the Appellant had "stopped work in mid 2011 due to ill health…".Tribunal was not able to ascertain how relevant this was to the Appellant's case. There was no medical to substantiate the Appellant's claim that he was prevented by illness from managing his affairs.

27. The Tribunal was bound to follow the decision in the Donaldson case in respect of the decision of HMRC to impose the Penalty and the Penalties and the giving of notice in respect of the latter and similarly relied on the Donaldson case on the issue of HMRC's omission to specify the relevant period.

28. The failure to file the return was not criminal in nature but administrative and no proof of qualitative misconduct was required. The Penalty and the Penalties were simply a means of securing the production of timely returns. So Article 6 of the ECHR did not apply.

29. The Penalties were neither harsh nor plainly unfair. The Tribunal relied on *International Roth GmbH v SSHD [2002] EWCA Civ. 158* in reaching this decision.

30. There were no exceptional, abnormal or unusable circumstances nor was there something out of the ordinary run of events to justify a Special Reduction. The Appellant had merely delegated his tax affairs and his general financial matters to his wife and his accountants.

31 For the reasons given the appeal was not successful. The Appellant must pay to HMRC the sum of £880.00

32 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.

JENNIFER A TRIGGER
TRIBUNAL JUDGE

RELEASE DATE: 29 MARCH 2017