



TC05865

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Appeal number: TC/2013/06667

*Income Tax - Individual Tax Return – Late Filing Penalty - Daily Penalties
and 6 Month Penalty- Reasonable Excuse - No- Appeal dismissed*

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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MRS ANDREA WILLIS T/A BUTTERFINGERS Appellant

- and -

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

TRIBUNAL: JUDGE JENNIFER A TRIGGER

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25 **The Tribunal determined the appeal on 24 April 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 6 September 2013 (with enclosures) and HMRC’s Statement of
Case (with enclosures) acknowledged by the Tribunal on 10 February 2017.**

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DECISION

Introduction

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1. This is an appeal against a Late Filing Penalty (the “Penalty”) Daily Penalties (the ”Penalties”) and a 6 Month Penalty (the “6 Month Penalty”) imposed under Paragraphs 3, 4 and 5 of Schedule 55 Finance Act (the “FA”) 2009 for the late filing of an Individual Tax Return for the tax year ending 5 April 2012.

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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
15 determination.

3. On 24 April 2017 the Tribunal decided that the appeal was unsuccessful.

Background Facts

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4. For the year ending 5 April 2012 Mrs Andrea Willis t/a Butterfingers (the “Appellant”) was required to file a return either electronically by 31 January 2013 or non-electronically by 31 October 2012. The Appellant chose to file non-electronically. The return was received by HMRC on 3 May 2013.

5. As the return was not received by the filing date HMRC issued a notice of penalty assessment on or around 12 February 2013 in the amount of £100.00.

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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 21 May 2013 in the sum of £900.00, the Penalties, calculated at the daily rate of £10.00 for 90 days.

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7. As the return has still not been filed 6 months after the penalty date, HMRC issued a notice of penalty assessment on or around 21 May 2013 in the amount of £300.00, the 6 Month Penalty.

8. The Appellant appealed to HMRC against the Penalty, Penalties and the 6 Month Penalty. The appeal was dated 22 February 2013 but was not received by HMRC until 1 July 2013. The appeal was rejected by letter dated 17 July 2013 because the appeal was out of time.

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9. The Appellant then wrote to HMRC, the letter was received by HMRC on 8 August 2013. The Appellant had realised that HMRC had not been received her original tax return and requested another return. HMRC sent another return but, according to the Appellant, it was the wrong form. The Appellant again contacted HMRC and filled in a correct return for the second time.

10. On 6 September 2013 the Appellant lodged a Notice of Appeal to HM Courts and Tribunal Service.

The Appellant's Case

5 11. The Appellant accepted that the return had been filed but claimed that there was a reasonable excuse.

Findings of Fact.

12. That the Appellant had filed the return late.

13. That HMRC had correctly calculated the Penalty, the Penalties and the 6 Month Penalty.

10 14. That the Appellant had failed to establish a reasonable excuse.

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

16. 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 17. 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.

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

19. That the Penalty, the Penalties and the 6 Month Penalty were not disproportionate and the penalty regime was proportionate in its aim.

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

The Legislation

21. Taxes Management Act 1970 section 8.

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

Reasons for the Decision

30 23. The return was filed non-electronically on 3 May 2013 when the correct date for non-electronic submission was 31 October 2012.

24. 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 £900.00. This was assessed at £10.00 per day and the return was filed 90 days late. The 6 Month Penalty was calculated under Paragraph 5 of Schedule 55 FA 2009 at £300.00

25. The Appellant claimed a reasonable excuse in that, she had sent the tax return by the due date but it had been returned by HMRC because it contained mistakes.

26. The Appellant was slightly dyslexic and “preferred to complete a full tax return.”

27. The Appellant had telephoned HMRC and asked that this form be sent to her, which it was. The Tribunal concluded that the Appellant was referring to “a full tax return”. After receipt she completed the “full tax return” and returned it to HMRC.

28. The Appellant then received a letter from HMRC which advised her to submit her tax return, which the Appellant had done.

29. It was the Appellant’s case that two tax returns for tax year 2011-2012 had been sent to HMRC. These had not been received by HMRC and concluded that they had been lost by the Postal Service.

30. The Appellant was overdrawn.

31. The Tribunal did not accept that these reasons amounted a reasonable excuse. There were no unusual or exceptional circumstances nor was there any unforeseen event.

32. The Appellant had been in the self-assessment scheme since 2000-2001 and was deemed to be aware of the filing deadlines. She had been charged penalties for the tax years 2004 to 2009 and would be familiar with the penalty regime.

33. Furthermore, the Appellant had claimed in the tax year 2010-2011 that her tax return had been lost by the Postal Service. On that occasion HMRC had accepted as a reasonable excuse the loss of the return in the post. The Appellant failed to obtain proof of posting for the 2011-2012 return which the Tribunal did not accept as a reasonable excuse, because the Appellant had failed to act as a responsible tax payer.

34. An inability to pay a penalty is not a reasonable excuse, Paragraph 23 of Schedule 55 FA 2009.

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

36. The failure to file the return was not criminal in nature but administrative and no proof of qualitative misconduct was required. The Penalty, the Penalties and the 6

Month Penalty were simply a means of securing the production of timely returns. So Article 6 of the ECHR did not apply.

37. The Penalty, the Penalties and the 6 Month Penalty were neither harsh nor plainly unfair. The Tribunal relied on *International Roth GmbH v SSHD [2002] EWCA Civ. 158* in reaching this decision.

38. 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 made a mistake which would not have occurred if he had acted prudently and with due diligence.

31 For the reasons given the appeal was not successful. The Appellant must pay to HMRC the sum of £1300.00

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: 10 MAY 2017