



TC03657

Appeal number: TC/2012/07066

INCOME TAX - Construction industry scheme - penalty for late submission of return - whether there was a “reasonable excuse” - no - whether there were “special circumstances” - no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MAHAL CONSTRUCTION LTD

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JOANNA LYONS

The Tribunal determined the appeal on 29 April 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 05 July 2012, HMRC’s Statement of Case (with enclosures) acknowledged by the Tribunal on 27 February 2014 and the Appellant’s Reply dated 19 March 2014.

DECISION

Introduction

1. This is an appeal against a penalty of £100, imposed for the late filing of the Contractor's Monthly Return for the one month period ending 05 January 2012. The penalty was imposed in accordance with Paragraph 8 Schedule 55 Finance Act 2009 ("FA").

2. Mr Hafiz of Hafiz & Co accountants appeals on behalf of the appellant company. ("the company")

10 The issue

3. Mr Hafiz appeals on the grounds that there was a reasonable excuse for the late filing of the return. This is disputed by HMRC.

The law

4. In so far as it is relevant to this appeal the relevant law is summarised below.

15 *Liability to submit the return*

5. Regulation 4 (1) of the Income Tax (CIS) Regulations 2005 ("the regulations") provides that a return must be made to HMRC in an approved form not later than 14 days after the end of every tax month. The tax month runs from the 6th day of one month to the 5th day of the next month. A return must be made by the 19th day of each calendar month.

Liability to a penalty

6. Paragraph 1 (1) Schedule 55 FA provides "A penalty is payable by a person ("P") where P fails to make or deliver a return, or to deliver any other document ...on or before the filing date".

7. In relation to the late filing of the CIS return a penalty of £100 is payable, Paragraph 8 Schedule 55 FA.

Reasonable excuse

8. Paragraph 23(1) Schedule 55 FA provides that "Liability to a penalty does not arise ... if the person satisfies the Tribunal that there is a reasonable excuse for the failure".

9. There is no statutory definition of the term "reasonable excuse". Case law has established that a reasonable excuse "is a matter to be considered in the light of all the circumstances of the particular case". *Rowland v HMRC [2006] STC (SCD) 536*.

Reliance on a third party

10. The case law on this issue is dealt with in the submissions.

Special circumstances

11. Paragraph 16 (1) Schedule 55 FA provides “If HMRC think it right because of special circumstances they may reduce the penalty” In the case of *Crabtree V Hinchcliffe (Inspector of Taxes) [1971] 3 All ER 967* established that the word “special..must mean unusual or uncommon”.

12. The Tribunal may reduce or cancel the penalty due to special circumstances only “if tribunal thinks that HMRC's decision in respect of the application of paragraph 16 was flawed”. Para 22 (3) (b) Schedule 55 FA. The word “flawed” is defined to be a decision which is either unlawful or wholly unreasonable such that it would be open to judicial review. Paragraph 22 (4).

The agreed facts

13. The company is registered to file online monthly returns under the Construction industry Scheme (“CIS”).

14. The company was registered for CIS in 2007 and all their previous returns were submitted on time. Their agents, Hafiz & Co accountants, were instructed to file the returns of behalf of the company. Hafiz & Co informed the company that the return had been filed on time.

15. For the month ending 05 January 2012 the CIS tax was paid on time. However the return was filed late. The return was due on 19 January 2012 and was received on 06 February 2012.

16. During the new year period 2011/12 Mr Hifaz’s cousin, Ijaz Hailing, was taken ill. This coincided with Mr Hailing’s son’s Wedding, which was due to take place on 07 and 14 January 2012.

The arguments

The appellant’s case

17. Mr Hifaz submits that the company has a reasonable excuse in they relied upon his assurances that the return had been filed. In support of his case he relies upon the decisions of the First Tier Tribunal in the following cases:

(1) *Stephen Rich V HMRC [2011] UKFTT 533* – reliance on a third party could amount to a reasonable excuse.

(2) *Leachman v HMRC [2011] UKFTT 261* - the taxpayer believed that his accountant had filed the return and vice versa. This was held to be a reasonable excuse.

18. He submits that he himself has a reasonable excuse for the late submission of the return as he completed the return on 07 January, before the due date, but simply

forgot to press send. The combination of his cousin's illness and his involvement in his nephew's wedding meant that this mistake was overlooked leading to the late submission of the return.

5 19. In the alternative he maintains that his explanation amounts to special circumstances in which the penalty can be cancelled.

The Respondent's case

20. HMRC do not accept that the company has a reasonable excuse for the late submission of the return because the mere reliance upon a third party does not amount to a reasonable excuse. In support of their case they rely upon the decision of the First
10 Tier Tribunal in the case of *Stewarton Polo Club LTD v The Commissioners for Her Majesty's Revenue and Customs [2011] UKFTT 668*.

21. They accept that Mr Hifaz genuinely forgot to file the return on time but do not accept that this amounts to a reasonable excuse nor does it justify cancellation of the penalty due to special circumstances.

15 **Reasons for decision**

Reasonable excuse – the company

22. I accept that the company relied upon Mr Hafiz to file the return and were assured that he had done so. However the mere fact of reliance upon a third party does not amount to a reasonable excuse for the failure to submit the return. This principle
20 has been established in several decisions of the First Tier Tribunal including *Stewarton Polo Club* (above) and *Westbeach Apparel Uk Ltd v The Commissioners for Her Majesty's Revenue and Customs [2011] UKFTT 561*. In the case of *Stewarton Polo Club* Judge Dr Staker stated at paragraph [17]:

25 “Failure of the agent to meet his or her obligations to the Appellant might entitle the Appellant to some recourse against the agent but, in the Tribunal's view, reliance on a third party such as an accountant cannot relieve the Appellant of its own obligation to file the P35 Return on time”

30 23. The decisions relied upon by Mr Hafiz are fact specific and do not undermine these principles.

Reasonable excuse – Mr Hafiz

24. I accept that Mr Hafiz's made a genuine mistake when filing the return. However he was accustomed to online filing and would have been aware of the importance of pressing “send” when filing the return.

35 25. I accept that Mr Hafiz was preoccupied by his family difficulties. However these difficulties did not prevent him delegating the task of online filing nor does it provide a reason for the failure to file the return between 15-19 of January.

26. For these reasons I do not find that there was a reasonable excuse for the late filing of the return on the part of Mr Hafiz or the company.

Special circumstances

5 27. HMRC have decided not to reduce or cancel this penalty due to special circumstances. I do not consider this decision to be flawed as there are no unusual or uncommon features of the case for the reasons outlined in paragraph 24 and 25 above.

28. Accordingly do not find that there are any grounds to cancel or reduce the penalty due to special circumstances.

Decision

10 29. There is no reasonable excuse for the late return.

30. There are no special circumstances to cancel or reduce the penalty.

31. The appeal against the late filing penalty of £100, is dismissed.

Rights of appeal

15 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)”
20 which accompanies and forms part of this decision notice.

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**JOANNA LYONS
TRIBUNAL JUDGE**

RELEASE DATE: 30 May 2014

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