[2017] UKFTT 480 (TC)

TC05932

Appeal number: TC/2013/09249

Income Tax - Individual Tax Return - Late filing Penalty - Daily Penalties - 6 Month Penalty - Reasonable Excuse - No- Appeal Dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

TIMOTHY LAPAGE **Appellant**

- and -

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

TRIBUNAL: JUDGE JENNIFER A TRIGGER

The Tribunal determined the appeal on 18 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 26 November 2013 (with enclosure) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 16 February 2017.

Decision

Introduction

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

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 18 April 2017 the Tribunal decided that the appeal was unsuccessful.

Background Facts

4. For the year ending 5 April 2012 Timothy Lapage (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 12 July 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, 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 23 July 2013 in the sum of £900.00.00, the Penalties, calculated at the daily rate of £10.00 for 90 days.

7. As the return had still not been received by HMRC six months after the penalty date, HMRC issued a notice of penalty assessment on or around 14 August 2013, the 6 Month Penalty, in the amount of £300.00.

8. The Appellant appealed against the Penalty, the Penalties and the 6 Month penalty on 8 July 2013, HMRC rejected the appeal by letter dated 2 August 2013 on the grounds that the deadline for lodging an appeal had passed. The Appellant requested a review, HMRC rejected the Appellant's request on the same grounds and advised the Appellant to contact HM Courts & Tribunal Service, (the "HMCTS").

9. Thereafter, the Appellant appealed the Penalty, the Penalties and the 6 Month Penalty to HMCTS by Notice of Appeal dated 26 November 2013.

10. The Appellant accepted that the return for the tax year 2011-2012 was filed late but maintained that there was a reasonable excuse.

Findings of Fact.

11. That the Appellant had filed the return for the tax year 2011- 2012 late.

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

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

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

15. 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.

16. 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.

17. 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.")

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

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

The Legislation

20. Taxes Management Act 1970 section 8.

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

Reasons for the Decision

22. The Appellant claimed a reasonable excuse on the grounds that he lived in Africa for many months each year and did not receive his mail in time to file his Individual Tax Return by the due date.

23. The Tribunal did not accept that the Appellant had demonstrated a reasonable excuse. There were no exceptional or unusual circumstances shown, nor was there any factor which was outside the Appellant's control. His employment took him

outside the UK to remote places where he was unable to receive either mail or internet access. It appeared to the Tribunal that the Appellant had an established work pattern which necessitated his being out of the UK for long periods. In those circumstances it was the responsibility of the Appellant to make arrangements to ensure that he fulfilled his legal obligation to file his tax returns. The Appellant had been registered for self-assessment since 13 October 1996 and would be well aware of his obligations in the opinion of the Tribunal.

24. The Appellant's absence from home due to the nature of his work was foreseeable and yet the Appellant had failed to exercise due diligence or taken any action to make alternative arrangements to comply with his responsibilities. By his omission the Appellant had failed to act as a prudent tax payer would have acted. This could not constitute a reasonable excuse.

25. The penalty notices were sent, by post, to the address notified by the Appellant to HMRC. The Tribunal found that HMRC was entitled to rely on the last known address given by the Appellant to HMRC, in the absence of any evidence to the contrary. So far as the Tribunal could ascertain, there was no contrary evidence and, accordingly, the Appellant had been served with the return for the tax year 2011-2012 and the notices of assessment for the Penalty, the Penalties and the 6 Month Penalty.

26. The Tribunal noted that the Appellant had a poor compliance record, filing returns late on a number of occasions including tax year 2012-2013.

27. 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 90 days late and the 6 Month Penalty was calculated under Paragraph 5 of Schedule 55 FA 2009 at £300.00.

28. The Tribunal had no power to discharge or adjust a fixed penalty which is properly due and was bound by the decision in *Hok Ltd v Revenue and Customs* in this respect.

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

30. 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.

31. 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.

32. There were no exceptional, abnormal or unusable circumstances nor was there something out of the ordinary run of events to justify a Special Reduction.

Furthermore under Paragraph 16 (2) of Schedule 55 FA 2009 does not include as Special Reduction an inability to pay.

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: 28 MAY 2017