



TC05796

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Appeal number: TC/2013/04896

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

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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**MS MARIA JAYNE OVERTON
(FORMERLY MRS MARIA JAYNE PODMORE)**

Appellant

- and -

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

Respondents

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TRIBUNAL: JUDGE JENNIFER A TRIGGER

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The Tribunal determined the appeal on 12 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 22 July 2013 (with enclosures) and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 6 February 2017.

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DECISION

Introduction

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1. This was an appeal against the late filing of an Individual Tax Return and the imposition of Daily Penalties (the "Penalties") under Paragraph 4 of Schedule 55 Finance Act (the "FA") 2009 for the year ending 5 April 2012.

10 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, this appeal was listed for determination.

3. On 12 April 2017 the Tribunal decided that the appeal was unsuccessful.

15 Background Facts

4. For the year ending 5 April 2012, Ms Maria Jayne Overton (formerly Mrs Maria Jayne Podmore, (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 April 2013 and
20 processed on 1 October 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, this was not appealed.

25 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 12 April 2013 in the sum of £710.00, the Penalties, calculated at the daily rate of £10.00 for 71 days.

30 7. The Appellant appealed the Penalties by her agent SR Higgs (the "Agent"), to HMRC, which rejected the appeal by letter dated 13 May 2013 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 11 July 2013. The conclusion of the review was that the decision of HMRC to impose the Penalties was confirmed.

35 9. By Notice of Appeal dated 22 July 2013 the Appellant appealed 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 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.
- 5 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
10 assessed in the notice of assessment, the validity on the notice was not affected.
16. That 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 Penalties were not disproportionate and the penalty regime was proportionate in its aim.
- 15 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 non- electronically on 12 April 2013 when the correct date for non-electronic submission was 31 October 2012.
22. As the return was late a penalty was calculated under Paragraph 3 of Schedule 55 FA 2009 (the “Penalty”) which specified the amount of the Penalty as £100.00.
25 This had been paid by the Appellant. The Penalties were calculated under Paragraph 4 of Schedule 55 FA 2009 at £10.00 per day. The return was filed 71 days late.
23. The Appellant claimed a reasonable excuse, namely, that the Agent had in February 2013 made a general enquiry with HMRC concerning a number of the Agent’s clients. The Appellant maintained that HMRC had given incorrect advice to
30 the Agent on the filing of the 2012 return. HMRC had advised “there was no difference (in filing on-line or in paper form) and that it was up to the accountant- this was not explained correctly”.
24. The Agent acted on the advice of HMRC. When the paper return was submitted late penalties were imposed. This would not have happened if the return was filed on-

line “as the deadline for this option was extended by 3 months”. If the Agent had received the correct information from HMRC the Appellant would have had to pay a penalty of only £100.00.

5 25. The Appellant had very low earnings at this time also and had worked for only 2 months as well.

26. The Tribunal did not accept that the Appellant has a reasonable excuse. Although the Appellant had employed an Agent to complete her tax return the Appellant remained responsible for the submission of the return by the due date.

10 27. The return set out the filing deadlines and the penalty regime. Reminders were sent by HMRC to reinforce the filing deadlines in August and September 2012 and a further reminder was issued by HMRC in December 2012. The Tribunal concluded that there was sufficient information available to the Appellant to enable her to file on time and to limit the accrual of the Penalties.

15 28. The Agent in its contact with HMRC had not enquired about the Appellant’s tax return, so that any advice tendered by HMRC, could be generic in terms only and should not have been relied by the Agent when handling the tax affairs of a specific client, like the Appellant.

20 29. As the Agent was a professional agent the Tribunal decided that it should have been aware of the due dates, the new penalty regime, at that time, and the consequences of filing late. There had been extensive publicity about the introduction of the then new penalty rules as well.

30 30. The fact that the Appellant had low wages was irrelevant because the penalties were raised for late filing so as to encourage tax payers to file on time.

25 31. Reliance on any other person to do anything for the Appellant could not be a reasonable excuse unless she took reasonable care to avoid failure, Paragraph 23 of Schedule 55 FA 2009. In the absence of any evidence as to the degree of care exercise by the Appellant the Tribunal determined that the Appellant had failed to establish a reasonable excuse.

30 32. 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 in respect of the latter and similarly relied on the Donaldson case on the issue of HMRC’s omission to specify the relevant period.

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

34. 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.

31 For the reasons given the appeal was not successful.

33 The Appellant must pay to HMRC the sum of £710.00

5 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
10 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**JENNIFER A TRIGGER
TRIBUNAL JUDGE**

RELEASE DATE: 19 APRIL 2017