



TC05738

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Appeal number: TC/2013/01541

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

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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IFTAKHAR LATIF

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 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 (with enclosures)dated 28 February 2013 and HMRC's Statement of
Case (with enclosures) acknowledged by the Tribunal on 31 January 2017.**

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Decision

5 Introduction

1. This is an appeal against a Late Filing Penalty (the “Penalty”) and Daily Penalties (the “Penalties”) and a 6 month Penalty (the “6 Month Penalty”) imposed under Paragraphs 3,4,5 respectively of Schedule 55 Finance Act (the “FA”) 2009 for the late filing of an Individual Tax Return and the accrual of Daily Penalties and the 6 Month Penalty 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 21 March 2017 the Tribunal decided that the appeal was unsuccessful.

Background Facts

4. For the year ending 5 April 2011 Mr Ifakhar Latif (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 non-electronically. The return was received by HMRC on 26 October 2012 and processed on the 23 November 2012.

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 7 August 2012 in the sum of £900.00, the Penalties, calculated at the daily rate of £10.00 for 90 days.

7. As the return was still outstanding 6 months after the penalty date HMRC issued a notice of penalty assessment on or around 7 August 2012 in the sum of £300.00, the 6 Month Penalty.

8. The Appellant appealed against the Penalty, the Penalties and the 6 Month Penalty to HMRC which rejected the appeal by letter dated 30 November 2012 but, in the same letter, offered a review.

9. The Appellant requested a review which was carried out by HMRC and notified to the Appellant by letter dated 30 January 2013. The conclusion of the review was that the decision of HMRC to impose the Penalty, the Penalties and the 6 Month Penalty was confirmed.

10. By Notice of Appeal dated 28 February 2013 the Appellant appealed the Penalty, the Penalties and the 6 Month Penalty to HM Courts & Tribunals Service. The Appellant accepted that the return had been filed late but claimed that there was a reasonable excuse.

5 Findings of Fact.

11. That the Appellant had filed the return 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.

10 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.

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

20 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.

25 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

30 22. The return was filed non-electronically on 26 October 2012 when the correct date for non- electronic submission was 31 October 2011.

23. 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. The 6 Month Penalty was calculated under Paragraph 5 of Schedule 55 FA 2009 which specified the amount of £300.00

24. The Appellant claimed as a reasonable excuse that his employer had failed to pay tax and National Insurance on his earnings during his employment. The Appellant had reported this omission to HMRC in September 2011. Thereafter, the Appellant was made redundant because, he believed, of his disclosure to HMRC.

25. The Appellant made a claim to the Employment Tribunal for unfair dismissal due to protected disclosures. The sum of £9,000.00 income was in dispute as well as the Appellant's employment status. The Appellant's employer maintained that the Appellant was self-employed and therefore responsible for his own tax liabilities. The issues was complex and time consuming. Proceedings had been commenced in the County Court as well to address the matter of the Appellant's income and employment status.

26. Despite these difficulties the Tribunal concluded, on the balance of probabilities, that the Appellant could have submitted the return with estimated figures. It was not accepted that any estimated figures would have been "wildly inaccurate". The Appellant had submitted returns for a number of years and in the course of the different legal proceedings he would, in all probability, have had access to financial information from which an estimate could be made. The Tribunal formed the view that the Appellant had failed to displace the strict legal responsibility on him to file a return.

27. It would be highly unlikely, in the opinion of the Tribunal, that provisional financial information supplied by the Appellant to HMRC would be regarded as unreasonable, provided the Appellant made full disclosure of the circumstances that had led to provisional figures.

28. It was not unexpected or unusual, for an employer not to pay tax and National Insurance; for there to be a dispute over employment status; for an employee to "whistleblow"; for proceedings to be commenced in the Employment Tribunal; for there to be a dispute between an employee and an employer over money or for proceedings to be commenced in the County Court to recover money.

29. None of these matters were outside the Appellant's control or unforeseeable. He had brought the proceedings in the Employment Tribunal and the County Court. It was the Appellant's protected disclosure which had probably prompted his dismissal and the Appellant must have considered that his employer would react in some way to that protected disclosure.

30. 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 those Penalties and similarly relied on the Donaldson case on the issue of HMRC's omission to specify the relevant period.

31. 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.

5 32. 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.

33. 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 could have provided provisional figures but did not do so.

10 31 For the reasons given the appeal was not successful. The Appellant must pay to HMRC the sum of 1300.00

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

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**JENNIFER A TRIGGER
TRIBUNAL JUDGE**

RELEASE DATE: 29 MARCH 2017

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