



TC05866

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Appeal number: TC/2013/07392

*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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MR GURMIT SINGH

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 24 October 2013 (with enclosures) and HMRC's Statement of
Case (with enclosures) acknowledged by the Tribunal on 15 February 2017.**

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DECISION

5 Introduction

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
10 of an Individual Tax Return for the tax 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
15 the Donaldson case and accordingly, the Appellant’s appeal was listed for determination.

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

Background Facts

4. For the year ending 5 April 2011 Mr Gurmit Singh (the “Appellant”) was
20 required to file a return either electronically by 31 January 2012 or non-electronically by 31 October 2011. The Appellant chose to file electronically. The return was received by HMRC on 3 September 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.

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

30 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 7 August 2012 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 to HMRC on 7 February 2013. The appeal was rejected by letter dated 27 February 2013 but HMRC offered a review.

35 9. On 24 October 2013 the Appellant lodged a Notice of Appeal to HM Courts and Tribunal Service.

The Appellant's Case

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

Findings of Fact.

- 5 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 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.")
- 20 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

- 25 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 return was filed electronically on 3 September 2012 when the correct date for non-electronic submission was 31 January 2012.
- 30 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 £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

24. The Appellant claimed a reasonable excuse in that, he had instructed an agent to complete the tax return. The agent had disappeared with all the relevant paperwork and the Appellant was unaware of the dates to file the return.

25. 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.

26. The Appellant had been required to file a tax return since tax year 2003-2004. The Tribunal concluded from this that the Appellant would be aware of the filing deadlines and, in particular, the penalties for failing to meet those deadlines because the Appellant had filed late the returns for the tax years 2004 to 2010 inclusive.

27. Reliance by the Appellant on his accountant is not a reasonable excuse unless the Appellant took reasonable care to avoid the failure by the accountant to file the tax return by the due date, Paragraph 23 of Schedule 55 of the FA 2009. The Appellant failed to demonstrate that he took reasonable care in supervising his accountant to ensure that the accountant complied with the Appellant's instructions.

28. 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.

29. 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.

30. 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.

31. 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.

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**JENNIFER A TRIGGER
TRIBUNAL JUDGE**

RELEASE DATE: 10 MAY 2017

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