[2020] UKFTT 0114 (TC)

TC07608

INCOME TAX - High Income Child Benefit Charge - Appellant in employment in 2017/18 - Late-filing penalty - Schedule 41 Finance Act 2008 - Reductions applied by HMRC - Penalty treated as non-deliberate and prompted - Imposed at 10% of High Income Child Benefit Charge - Whether reasonable excuse? - No - Whether HMRC's treatment of special circumstances wrong? - No Appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/08973

BETWEEN

THOMAS ANTHONY ROGERS **Appellant**

-and-

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

TRIBUNAL: JUDGE CHRISTOPHER MCNALL

Sitting in public at Alexandra House, 14-22 The Parsonage, Manchester M3 2JA on 24 February 2020

No appearance by the Appellant

Mr Matthew Wilby, HMRC Litigator of HM Revenue and Customs' Solicitor's Office and Legal Services, for the Respondents

DECISION

INTRODUCTION

1. This appeal is made by way of a Notice of Appeal dated 21 November 2019. It challenges a penalty of £178.80 imposed by HMRC on 3 July 2019 and upheld at departmental review on 29 October 2019.

2. That penalty was imposed in relation to the Appellant's failure to notify HMRC of chargeability to income tax in the year ending 5 April 2018, under Schedule 41 of the Finance Act 2008. The Appellant was in employment as a doctor throughout that year, and enrolled in the PAYE system.

3. However, his adjusted net employment income was in excess of £50,000 and therefore he was liable to the High Income Child Benefit Charge ('HICBC') which had been introduced with effect from 7 January 2013 by the Finance Act 2012.

4. His wife received £34.40 a week (£1788.80 a year) in Child Benefit throughout the whole of that tax year, being paid in relation to their two eldest children. On 3 July 2019, HMRC wrote and notified the Appellant of an assessment of £1788 and the penalty in dispute, calculated by HMRC at 10% of that sum, which is the full deduction allowable when behaviour is 'non-deliberate' and 'unprompted' and where the disclosure of the non-payment has been made within 12 months of the end of the tax year.

PROCEEDING WITH THE HEARING IN THE ABSENCE OF THE APPELLANT

5. The Appellant did not attend the hearing, and nor was he represented. The hearing was listed to begin at 10am. The Tribunal waited until 10.30am to begin, in case the Appellant had encountered difficulties travelling to central Manchester. There was nothing in the papers before me to suggest that the Appellant was not planning to come to the hearing, or had sought an adjournment. Mr Wilby, who appeared for HMRC, told me that, as far as he was aware, the Appellant had not told HMRC that he did not plan to come to the hearing.

6. Pursuant to Rule 33 of *The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009* (SI 2009/273) I decided to proceed with the hearing in the absence of the Appellant. I was satisfied that the Appellant had been notified of the hearing and I was satisfied that it was in the interests of justice to proceed. Whilst acknowledging that this appeal is important to the Appellant, this is an appeal which concerns a sum of less than £200. Adjourning to another day without knowing why the Appellant had not come today would not be proportionate and would simply risk another adjournment.

7. Moreover, I was satisfied that I could deal with the Appellant's arguments fairly on the basis of his letters to HMRC and the Tribunal which were in the bundle. I also saw and had the opportunity to consider transcripts of two calls made by the Appellant to HMRC, made on 14 December 2017 and 25 January 2018, which were not in the bundle but which the Appellant wished to rely on, and which had been provided to the Appellant under cover of an email dated 10 February 2018.

8. The Grounds of Appeal, in summary, are as follows:

   (1) The Appellant was not aware of his HICBC liability;

   (2) He never received anything in writing or otherwise in 2015, when applying for child benefit, explaining HICBC;

   (3) He did not receive letters about HICBC subsequently, despite the fact that he had notified HMRC online of a change of address;

(4) He suffers from severe anxiety and has done so throughout the period of the failure to notify;

(5) He was not told in the course of the two phone calls about that he should have registered for self-assessment;

(6) HICBC is unfair.

9. This is a penalty appeal and therefore HMRC (as it accepts) bears the burden of showing that the penalties have been charged correctly.

10. There is no dispute in this appeal that the HICBC was payable, or that the Appellant had not filed a self-assessment return for 2017/18 in time, nor notified HMRC of chargeability to tax. There is no dispute that HMRC was entitled to assess what it did, when it did. There is no appeal against the assessment of £1788 and indeed that sum seems to have been very promptly paid to HMRC once Mr Rogers was made aware of his liability to pay it.

11. Accordingly, the scope of this dispute is limited to the points raised above, and whether they, or any of them, constitute a reasonable excuse (Finance Act 2008 Schedule 41 Paragraph 20(1), or amount to special circumstances (Schedule 41 Paragraph 14) such as to justify the Tribunal adjusting the penalty.

REASONABLE EXCUSE

12. I can deal with (1) and (2) together. I am satisfied that HMRC took steps to make taxpayers generally aware of the HICBC. The introduction of the HICBC was not entirely uncontroversial, and it was very widely publicised. HMRC were not under any statutory duty to notify the Appellant individually. Moreover, the law was not new. It had already been in force for some years by the time the Appellant became subject to it.

13. I am also satisfied that the Appellant and his wife would have been provided with a 'Bounty Pack' which would have included information about HICBC.

14. Child Benefit is claimed by way of a claim form. Two of the Appellant's children were born after the HICBC came into existence. Child Benefit claim forms would have been completed. I have seen a template of one of those. The claim forms ask whether "you or your partner have an individual income of more than £50,000 a year" and set out other relevant information. It is a fairly lengthy and complex form, but the £50,000 income limit is set out prominently on the first page of the claim form.

15. In relation to this issue, the Appellant bears the burden. Without having heard from the Appellant personally, I simply cannot make any findings, even on the balance of probabilities, as to whether the Appellant genuinely did not know of the HICBC. Therefore, I cannot make any finding, in his favour, and even if he genuinely and honestly did not know of the HICBC, that this amounts to a reasonable excuse.

16. As to (3), the house move referred to - from Thorn Street to Burnley Road East - is said by the Appellant to have taken place in December 2018. But the HICBC and the penalty here arose in 2017/18, which ended in April 2018. A letter was sent to the Appellant at Thorn Street on 22 October 2018 (i.e., when he was still living there) relating to liability for HICBC (appearing at page 47 of the bundle). In my view, the October 2018 letter gave the Appellant sufficiently clear indication of the position, and what he needed to do. That letter was not returned to HMRC as undelivered. Here, the evidential burden of showing that he had not received the October 2018 letter is on the Appellant, and he has not discharged the burden. This conclusion does not depend on the January 2019 letter (also sent to Thorn Street) although I do not know (because the Appellant does not say) what arrangements for forwarding post from the old address to the new one he had put in place.

17. As to (4), the Appellant has not placed any medical evidence before me. The Appellant bears the burden (albeit only to the usual civil standard, i.e., the balance of probabilities) of demonstrating that he suffered from a condition which gave rise to a reasonable excuse for not filing a self-assessed tax return for 2017/18. It is not clear to me whether the Appellant does genuinely wish to raise this point. It seems to me that he has done so only reluctantly, and only by way of explaining his overall approach to his duties as a taxpayer.

18. Therefore, and only for the sake of completeness, if he does raise this argument, then there is no evidential basis on which I can make any findings in the Appellant's favour in this regard (even on the balance of probabilities).

19. But I should nonetheless record in this decision, which is a public document, that Mr Wilby on behalf of HMRC accepted (sensibly) that the treatment of this issue in the review letter was not very delicately communicated. I agree. It does seem to me that there was a shortcoming in the sensitivity of HMRC's communication which served to upset and antagonise the Appellant.

20. As to (5), I have reviewed the verbatim transcripts of the phone calls. Both were fairly lengthy calls principally dealing with the issue of the Appellant's PAYE coding. That was slightly complicated because the Appellant was working as a locum doctor for a number of agencies and so had a number of different employers. Nothing was said about child benefit and nothing was asked. That is not surprising. The call was not about child benefit. It was about the Appellant's PAYE coding.

21. The furthest which this even arguably goes is the exchange set out at lines 127-131 of the January 2018 call where the advisor advised that there would only be certain circumstances where the Appellant would need to self-assess 'usually ... if you're earning over £100,000 in a year ... or if you're claiming large amounts of expenses or if you got (sic) property income or other income outside of paying ermm (sic) that hasn't been taxed on things like that." The Appellant was told that there was no record "saying you have to do a self-assessment at this time." I agree that was a representation, but it was in a particular context. I do not consider that single remark, in an otherwise very lengthy conversation, does give rise here to a reasonable excuse, especially when it is set against the context of the letters and other communications set out above making taxpayers generally aware of the HICBC.

22. It was also submitted that the advisor in those calls would only have had access to the Appellant's PAYE information, and not to Child Benefit information. The Child Benefit was not being received by the Appellant, but by his wife.

23. As to (6), the issue of fairness is not one within the Tribunal's jurisdiction. The HICBC and the penalty provisions are laid down by Parliament, which has a wide discretion. There has been guidance by the Upper Tribunal (albeit in the context of VAT default surcharges) that the Tribunal must be astute not to substitute its own view of what is fair for the penalty which Parliament has imposed: *HMRC v Trinity Mirror plc* [2015] UKUT 0421 (TCC). I regard the same restriction to be applicable here.

SPECIAL CIRCUMSTANCES

24. This is mentioned in the review letter, and also in HMRC's Skeleton Argument, although in both instances only very briefly. In broad terms, an Appellant would have to show something special, in the sense of something out of the ordinary, uncommon, or abnormal.

25. I have already set out my views above on whether a reasonable excuse existed. But even taken together, and looked at in the light of special circumstances, I do not think that the circumstances were special in the sense outlined above.

RIGHT TO APPLY TO SET ASIDE THE DECISION

26. Because the hearing was held in the Appellant's absence, the appellant has the right to apply to the Tribunal to set this decision, or any part of it, aside and to remake it, pursuant to Rule 38 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. Any such application must be received by this Tribunal not later than 28 days after this decision is sent to the Appellant.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

27. 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.

DR CHRISTOPHER MCNALL

TRIBUNAL JUDGE

RELEASE DATE: 27 FEBRUARY 2020