



TC05834

Appeal number: TC/2013/05101

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*Income Tax - Individual Tax Return – Late Filing - Daily Penalties, 6
Month Late Filing Penalty – 30 Day Late Payment Penalty – 6 Month Late
Payment Penalty and 12 Month Late Payment Penalty - Reasonable Excuse
- No- Appeal dismissed*

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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NAZIA NASIR

Appellant

- and -

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

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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 31 July 2013 (with enclosures) and HMRC’s Statement of Case
30 (with enclosures) acknowledged by the Tribunal on 7 February 2017.**

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DECISION

5 Introduction

1. This an appeal against 2 Late Filing Penalties (the “Penalty”) imposed under Paragraph 3 of Schedule 55 Finance Act (the “FA”) 2009 for the late filing of an Individual Tax Return for the tax year ending 5 April 2010.

2. This an appeal, also, against a Late Filing Penalty (the “Penalty”), Daily Penalties (the “Penalties”), a 6 Month Late Filing Penalty (the “ 6 Month Penalty”), a 30 Day Late Payment Penalty (the “ 30 Day Late Payment Penalty”) , a 6 Month Late Payment Penalty (the “6 Month Late Payment Penalty”) and a 12 Month Late Payment Penalty (the “ 12 Month Late Payment Penalty”) imposed under Paragraphs 3 and 4 of Schedule 55 of the FA 2009 and imposed under Paragraph 1 and 3 of Schedule 56 of the FA 2009 for the tax year ending 5 April 2011

3. 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.

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

Background Facts

5. For the year ending 5 April 2010 Nazia Nasir (the “Appellant”) was required to file a return either electronically by 31 January 2011 or non-electronically by 31 October 2010. The Appellant chose to file electronically. The return was received by HMRC on 27 January 2013.

6. As the return was not received by the filing date HMRC issued a notice of penalty assessment on or around 15 February 2012 in the amount of £ 100.00, the Penalty. As the return had still not been received 6 months after the filing date HMRC issued a further notice of penalty determination on or around 2 August 2011 in the amount of £100.00, the Penalty

7. For the year ending 5 April 2011 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 electronically on 27 January 2013.

8. 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.

9. As the return had still not been filed three months after the penalty date, HMRC issued a notice of penalty assessment on or around 7 August 2012 in the amount of £900.00, the Penalties, calculated at the daily rate of £10.00 for 90 days.
10. As the return had still not been received 6 months after the penalty date, HMRC issued a penalty assessment on or around 7 August 2022 in the amount of £300.00, the 6 Month Penalty.
11. The Appellant had filed online whereby the liability was automatically calculated.
12. The Appellant's tax liability for the tax year 2010-2011 was £1554.24. The tax was due to be paid on or before 31 January 2012. At the penalty date of 3 March 2012 the total tax liability remained unpaid.
13. 5 months after the penalty date of 3 March 2012 the total amount of the tax liability was still unpaid. 11 months after the penalty date the whole of the tax liability remained unpaid.
14. The tax liability was eventually paid in full on 21 June 2013.
15. HMRC issued a notice of penalty assessment on or around 29 January 2013 in the amount of £77.00, 5% of the unpaid tax at the penalty date, the 30 Day Late Payment Penalty.
16. HMRC issued a second notice of penalty assessment on or around 29 January 2012 in the amount of £77.00, 5% of the tax unpaid 5 months after the penalty date, the 6 Month Late Payment Penalty.
17. Again HMRC issued a notice of penalty assessment on or around 19 February 2013 in the amount of £77.00, 5% of the tax unpaid 11 months after the penalty date, the 12 Month Late Payment Penalty.
18. On 27 June 2013 the Appellant appealed to HMRC against the penalty assessments for the tax years 2009-2010 and 2010-2011.
19. The appeal were rejected by letter dated 16 July 2013 but HMRC offered a review in each appeal.
20. On 31 July 2013 the Appellant agent, Alchemy Associated Ltd (the "Agent"), lodged a Notice of Appeal to HM Courts and Tribunal Service.

The Appellant's Case

21. The Appellant accepted that the returns for the tax years 2009-2010 and 2010-2011, (the "Returns"), had been filed late but claimed that there was a reasonable excuse.

Findings of Fact.

22. That the Appellant had filed the Returns late.
23. That HMRC had correctly calculated the Penalty, the Penalties, the 6 Month Late Filing Penalty, the 30 Day Late Payment Penalty, the 6 Month Late Penalty and the 12 Month Late Payment Penalty for the tax years 2009-2010 and 2010-2011.
- 5 24. That the Appellant had failed to establish a reasonable excuse.
25. That HMRC had made a decision required by Paragraph 4 (1) (b) of Schedule 55 FA 2009 to charge the Penalties.
26. 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.
- 10 27. 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.
- 15 28. That the Penalty, the Penalties, the 6 Month Late Filing Penalty, the 30 Day Late Payment Penalty, the 6 Month Late Payment Penalty and the 12 Month Late Payment Penalty for the tax year 2009-2010 and 2010-2011 were not criminal in nature for the purpose of Article 6 of the European Convention on Human Rights (the “ ECHR.”). They were not disproportionate either and the penalty regime was proportionate in its aim.
- 20 29. That there were no special circumstance which would support a Special Reduction under Paragraph 16 of Schedule 55 FA 2009.

The Legislation

30. Taxes Management Act 1970 section 59, 8.
31. Schedule 55 FA 2009 Paragraphs 1, 3, 4, 5, 6(1), 6(5), 16, 18, 20, 21, 22 and 23.
- 25 32. Schedule 56 FA 2009

Reasons for the Decision

33. The Returns were filed electronically on 27 January 2013, when the correct date for electronic submission for tax years 2009-2010 and 2010-2011 was respectively was 31 January 2011 and 31 January 2012.
- 30 34. As the Returns were late the Penalty was calculated under Paragraph 3 of Schedule 55 FA 2009 which specified the amount as £100.00, for each return filed late. The Penalties were calculated under Paragraph 4 of Schedule 55 FA 2009 at £10.00 per day. The return for the tax year 2010-2011 was filed 90 days late. The 6 Month Penalty was calculated under Paragraph 5 of Schedule 55 FA 2009 at £300.00.

35. The 30 day, 6 month and 12 month Late Payment Penalty was calculated, in each case, under Schedule 56 FA 2009 which specified the amount for each late payment as 5% of the tax unpaid after the penalty date. In each case the full amount of tax liability was unpaid at the penalty date and each penalty was, therefore, the same calculated at £77.00.

36. The Appellant claimed a reasonable excuse. She had had a number of personal problems which impacted on her ability to attend to her tax affairs. For 6 years prior to 2011 the Appellant's father had suffered with health problems. He had been cared for by the Appellant's mother but by 2010-2011 the health of the Appellant's mother had begun to deteriorate. This meant that the Appellant was required to take on more responsibility for her parent's welfare. At this time, the Appellant's parents were not able to manage the family business and the Appellant neglected the family business also. After a fire at the business premises the shop was closed on 2 December 2012. It was not until June 2013 that the Appellant was in a position to attend to her own tax matters and submit her self- assessment returns.

37. The Appellant had been required to submit assessment returns since 2003-2004 and would have been aware of the need to file the returns on time. Furthermore, the Appellant had previously filed late tax returns and been charged penalties. This should have caused the Appellant to take extra care to ensure that her tax returns were filed on time. The Appellant had failed to act as the Tribunal would expect a prudent taxpayer to act.

38. The illness or death of a close relative can amount to a reasonable excuse if it took up a tax payer's time during the period from the filing date to the date the return was received. In the Appellant's case her father died on 2 February 2011, nearly 12 months before the latest filing date for an electronic return. The Appellant failed to give an adequate reason for her failure to submit the Returns after her father's death. On the facts as presented by the Appellant no reasonable excuse had been shown.

39. 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.

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

41. 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.

42. 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 a poor compliance record and had taken no steps to prevent the late submission of the returns for the relevant tax years.

43. 31 For the reasons given the appeal was not successful. The Appellant must pay to HMRC the sum of £1731.00

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 “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**

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RELEASE DATE: 27 APRIL 2017

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