

[2020] UKFTT 237 (TC)



**TC07722**

**Appeal number: TC/2019/06592**

FIRST-TIER TRIBUNAL  
TAX CHAMBER

*Income Tax – application for permission to appeal out of time – not granted.*

**DEBESAI ASFAHA**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE DR K KHAN**

The Tribunal determined this appeal on 7 April 2020 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 8 November 2019 and HMRC Statement of Case submitted on 2 January 2020.

## MATTER UNDER APPEAL

The matter before the Tribunal is an appeal against late filing penalties charged under Schedule 55, Finance Act (FA) 2009 in respect of the late filing of a Self-Assessment Individual Tax Return.

The penalties charged in the amount of £1,600 are as follows:

| Tax Year ending | Date penalty Created/issued | Description                    | Amount (£)       |
|-----------------|-----------------------------|--------------------------------|------------------|
| 2015-2016       | 07/02/2017                  | Individual late filing penalty | 100              |
|                 | 11/08/2017                  | Daily Penalty                  | 900              |
|                 | 11/08/2017                  | 6 months late filing penalty   | 300              |
|                 | 15/05/2018                  | 12 months late filing penalty  | 300              |
|                 |                             | Total                          | <b>£1,600.00</b> |

1. This appeal includes an application to the Tribunal, by the Appellant, to appeal out of time to HMRC.
2. HMRC object to the late appeal.
3. Mr Asfaha is appealing against penalties issued under Schedule 55 (FA) 2009 for the late submission of his self-assessment return for the 2015-2016 tax year.
4. Section 31 Taxes Management Act (TMA) 1970 gives the right of appeal against tax assessments, and Section 31A says the appeal must be within 30 days of the specified date, being the date, the notice was given.
5. Mr Asfaha's appeal was received by HMRC on 20 August 2019.
6. The table below shows the extent of the delay.

| TAX YEAR | PENALTY NOTICE DATE | LAST DATE TO APPEAL | APPEAL RECEIVED | DAYS LATE |
|----------|---------------------|---------------------|-----------------|-----------|
| 2015-16  | 07/02/2017          | 08/03/2017          | 29/08/2019      | 905       |

7. HMRC considered the late appeal under Section 49 TMA 1970 and did not agree to the late notice being given and refused the late appeal.
8. Mr Asfaha applied to the Tribunal for an extension of time to appeal to HMRC on 8 November 2019.

## FACTS

9. The notice to file for the year ending 5 April 2016 was issued to Mr Asfaha on or around 6 April 2016.

10. The address the notice to file was issued was to Flat 6, Ramsey House, SW9 6NB which is the correct address.
11. The filing date was 31 October 2016 for a non-electronic return or 31 January 2017 for an electronic return.
12. Mr Asfaha's electronic return for the year 2016 was received on 8 July 2019.
13. The return was submitted 888 days late. The penalties were explained in correspondence.
14. In accordance with Paragraph 3 of Schedule 55 FA 2009, as Mr Asfaha did not submit a return by the filing date of 31 January 2017, he was liable to a penalty of £100. HMRC issued a notice of penalty assessment on or around 7 February 2017 in the amount of £100. Further penalties (as above) were imposed on 11 August 2017 and 15 May 2018.

### **Appellant's Submissions**

15. Mr Asfaha has not provided any reason for appealing late but provided grounds for the substantial appeal as follows:

16. The Appellant stated the grounds for appeal as follows:

17. Grounds of appeal dated 29 August 2019:

*'2015/16 tax return, I submit late, with help of an agent, I was working under agent - umbrella then, I get injured (Construction Industry) and could work or earn living. I only had small employment income and zero income as self-employed.'*

18. Grounds of appeal dated 8 August 2019:

*'It was my first time to become a self-employed, I had an accountant. I paid him to do everything to do for me. But he failed to do so. At that time I lost my licence, I informed him I stop it. Not long I work as self-employed. I had so many problems with myself. I didn't know the rules and secondly I went abroad (back home to Africa). I was so depressed. If I knew I could do it without delay. But I paid the late £100 penalty.'*

### **HMRC SUBMISSIONS**

19. HMRC submissions show that Mr Asfaha was at Flat 6, Ramsey House, Vassall Road, SW9 6NB to which the notice to file (SA316) was issued. The address was provided by Mr Asfaha on his application form 'Register if you're a self-employed sole trader' (CWF1) dated 7 October 2015.

20. Mr Asfaha's electronic return for the year 2015-2016 was received on 8 July 2019.

21. HMRC issued the SA326D penalty notice on or around 7 February 2017, to the given address. HMRC are satisfied the penalty notice was issued to the notified address and effectively served by the provision of Section 7 Interpretation Act 1978.

22. No details had been provided by Mr Asfaha or his agent of his injury or dates on which the injury occurred for HMRC to consider how this prevented him from making an appeal, or filing his tax return, by the relevant deadline.
23. HMRC contend that Mr Asfaha was correctly made aware of both the requirement to file a 2015-2016 tax return and of the accruing penalty.
24. The delay is considerably longer than the three months referred to in *Romasave (Property Services) Ltd v HMRC 2015 UKUT 0254 (TCC)* as serious and significant.
25. There is prejudice to HMRC in allowing a late appeal in terms of time and cost.
26. The consequences of refusing the late appeal are clear. Mr Asfaha will have to pay the penalty which is a significant sum.
27. HMRC respectfully requested the application for an extension of time to appeal to HMRC not be allowed and subsequently be dismissed.

## **DISCUSSION**

28. The Upper Tribunal in *Martland v HMRC (2018) UKUT 178 (TCC)* stated that when the FTT is considering applications for permission to appeal out of time, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be given. In considering permission, the FTT can usefully follow the rule in the *Denton* case, which is:
- i. establish the length of delay and consider whether serious or significant,
  - ii. establish the reason why the default occurred,
  - iii. evaluate “all the circumstances of the case as a balancing exercise,
29. The Tribunal must give effect to the overriding objective of dealing with cases fairly and justly. Where permission is sought to make a late appeal, the Tribunal must consider all the circumstances of the case in a balancing exercise.
30. First the length of delay in this case is serious and significant.
31. Second, the explanation for the delay is weak in that no real explanation has been provided by the Appellant. It would appear that there has been a lack of attention to detail and timetable which is not the action of a prudent tax payer wanting to meet deadlines.
32. Thirdly, we must look at the consequences of granting or refusing late appeal. The consequence for the Appellant is that there will be a large bill to pay as a penalty and there will be no opportunity to argue this liability should be lowered or indeed that there is a reasonable excuse. For HMRC the matter would be brought to an end and there will be no further cost involved.

33. The Tribunal does not wish to have a mini hearing on the substantive appeal but taking all matters into consideration and the fact that appeals out of time should only be given sparingly and that this is a weak case without much prospect of success. Permission to appeal out of time is not granted.

34. There is a purpose in having a time limit for making appeals and it is necessary to bring matters to an end without substantive delay. Any further delay will not help either party and will not be in the interest of justice.

35. Appeal to leave out of time is therefore not granted.

### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

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 KAMEEL KHAN**

**TRIBUNAL JUDGE**

**RELEASE DATE: 22 MAY 2020**