



TC07937

CT – Tax return – late filing penalties – injury of sole director – late appeal – return still not filed – reasonable excuse – special circumstances – late appeal not admitted – appeal dismissed

Appeal number: TC/2020/01946

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RYDEN CONTRACTORS LTD

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JOHN MANUELL

The Tribunal determined the appeal on 28 September 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 1 June 2020 and HMRC's Statement of Case dated 31 July 2020 (with document bundle).

DECISION

1. This late appeal was brought against four Company Tax ("CT") return late filing penalties for the accounting period ending 28 February 2018, respectively of £100 dated 15 March 2019, £100 dated 16 September 2019, £189.23 dated 20 September 2019 and £189.23 dated 16 March 2020. There was no dispute that the penalties totalling £578.46 if due had been correctly calculated.
2. The Appellant failed to follow the correct procedure for its appeal and appealed directly to the Tribunal. HMRC have sensibly waived that procedural objection, but maintain their objection to the appeal on general lateness grounds. The appeal was

not filed with the Tribunal until 1 June 2020, meaning that (for each individual penalty) the appeal was respectively 412, 259, 255 and 77 days late.

3. Section 49(2)(b) of the Taxes Management Act 1970 requires an appellant whose appeal is late to obtain permission to proceed from the First-tier Tribunal. The principles to be applied are explained in decisions such as *Martland* [2018] UKUT 0188 (TC) and *Romasave* [2015] UKUT 254 (TCC) and the Tribunal has followed that guidance.

4. HMRC's case on the late appeal issue which is a preliminary point is that there has been significant and serious delay by the Appellant. The statutory notices were all correctly served. The Appellant blamed illness of its director for the delay but Companies House records showed that company accounts for the accounting period ending 28 February 2018 were filed online on 16 October 2018, which was by the due date. The CT return for the same period had still not been filed. The Appellant's case was not strong enough to warrant admitting it as a late appeal.

5. The main issues were whether (a) the Appellant could show a reasonable excuse for the long delay in filing its Notice of Appeal; and if the appeal were permitted to proceed as a late appeal whether (b) the Appellant could show a reasonable excuse for the delay in filing its CT return and (c) the facts disclosed any special circumstances.

6. The relevant legislation and case law was set out in the bundle supplied by HMRC to the Appellant and includes the Taxes Management Act 1970, the Finance Act 1998 and the Income and Corporation Taxes (Electronic Communications)(Amendment) Regulations 2009 SI 2009/3218.

The provisions concerning reasonable excuse are set out in the Finance Act 2009, schedule 55, paragraph 23. "Reasonable excuse" is not defined by statute. It is an objective test and requires a careful, fact-sensitive assessment, considering all relevant circumstances. The Tribunal has been guided by the decision in *Perrin v HMRC* [2018] UKUT 156 (TCC), especially at [71] to [76].

The circumstances in which a special reduction because of special circumstances may be applied are set out in the Finance Act 2009, schedule 55, paragraph 16;

The Tribunal's powers on such appeals are set out in the Finance Act 2009, schedule 55, paragraph 22.

7. According to the Notice of Appeal, the Appellant said in summary that its sole director had been injured at work in October 2017 for which he had needed two operations. He could not afford his accountant who had previously been doing the returns. He was now well enough to do the accounts himself. He could not afford the penalties and would have to close the Appellant down if the appeal failed. By implication he asked that the penalties should be cancelled.

8. The Appellant filed evidence in the form of email exchanges with Companies House concerning the late filing of company accounts for the period ending 28 February 2019. The Appellant's director had faced prosecution.

9. The Tribunal must first consider whether the late appeal should be admitted. Here the foremost of the Appellant's difficulties is that, according to HMRC and

which the Tribunal has seen no evidence to doubt, the CT return which is the subject of this appeal has still not been filed, despite the Appellant's promise that the accounts would be brought up to date. As HMRC point out, the Appellant had managed to file its company accounts for the same period (year ending 28 February 2018) yet had not dealt with its CT return which covered the same period and for which the same or substantially the same information was needed. No explanation for that discrepancy has been provided, except possibly shortage of funds to engage an accountant.

10. Be that as it may, the fact that the Appellant has not filed its CT return means that further penalties will be accruing and any appeal is bound to fail because the Appellant will be unable to show the date by which compliance was achieved. Although the Appellant has indicated to HMRC that it wanted to appeal, the failure to file the CT return meant that HMRC could not consider any appeal. It also has to be said that the Appellant should have made some provision for its sole director to receive help with its account in the event of ill health, which is a common enough hazard of life, perhaps especially in the construction industry. Insurance is the prudent course. Unfortunately the Appellant had no back up and did not act quickly enough to get help. In the Tribunal's view any reasonable excuse which it might have had because of ill health ended quickly, because it has known for many months that there were CT return filing deadlines to meet. The fact that the Appellant's director has since faced enforcement action from Companies House tends to underline his failure to seek assistance in meeting his statutory obligations as a company director. Hence the Appellant's underlying case is weak if not hopeless.

11. But that stage is never reached, because the Appellant has failed to explain in any satisfactory way why it has not put itself in a position to pursue an appeal within the time limit. The Tribunal finds that there was no reasonable excuse for the late appeal.

12. The Tribunal refuses permission to admit the late appeal. The appeal is accordingly dismissed.

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.

**JOHN MANUELL
TRIBUNAL JUDGE**

RELEASE DATE: 13 NOVEMBER 2020