



Neutral Citation: [2023] UKFTT 862 (TC)

Case Number: TC08963

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2017/06282

Corporation tax – late filing penalties – reasonable excuse

Heard on: 18 September 2023
Judgment date: 13 October 2023

Before

**TRIBUNAL JUDGE MCGREGOR
JANE SHILLAKER**

Between

WHITE BREEZE LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Philip Evans, accountant

For the Respondents: Mr Joshua Gyasi, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was V (video) via Tribunal video hearing system. A face-to-face hearing was not held because a remote hearing was appropriate. The documents to which we were referred are a bundle of 321 pages.

2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

3. This case is an appeal against penalties imposed upon White Breeze Limited (“**WBL**”) for late submission of its corporation tax returns for the periods ended 31 July 2013, 2014 and 2015.

LAW

4. Following the receipt of a notice from HMRC to deliver a return, a company must, under paragraph 3 of Schedule 18 to Finance Act 1998 (“**Sch 18**”), submit a company tax return no later than the filing date.

5. The filing date of a return is, pursuant to paragraph 14 of Sch 18 (to the extent relevant to this appeal), twelve months from the end of the period for which the return is made.

6. A company that fails to deliver its company tax return by the filing date is liable to a flat-rate penalty under paragraph 17 of Sch 18.

“17(1) A company which is required to deliver a company tax return and fails to do so by the filing date is liable to a flat-rate penalty under this paragraph.

It may also be liable to a tax-related penalty under paragraph 18.

17(2) The penalty is–

- (a) £100, if the return is delivered within three months after the filing date, and
- (b) £200, in any other case.

17(3) The amounts are increased to £500 and £1,000 for a third successive failure, that is, where–

- (a) the company is within the charge to corporation tax for three consecutive accounting periods (and at no time between the beginning of the first of those periods and the end of the last is it outside the charge to corporation tax),
- (b) a company tax return is required for each of those accounting periods,
- (c) the company was liable to a penalty under this paragraph in respect of each of the first two of those periods, and
- (d) the company is again liable to a penalty under this paragraph in respect of the third period.

7. Section 118(2) of the Taxes Management Act 1970 (which applies to the submission of company tax returns by virtue of section 117 of Finance Act 1998) provides:

“For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the tribunal or officer concerned may have allowed; and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased.”

FACTS

8. The following facts were not disputed:

- (1) WBL’s accounting period end was 31 July in each of the years in question.
- (2) Mr Phillimore, the director of WBL, had died on 22 November 2017
- (3) The tax returns for all three periods in question were submitted to HMRC on 12 June 2018.
- (4) There was no corporation tax to pay in respect of the relevant years.
- (5) In respect of the period ended 31 July 2013:
 - (a) A flat rate penalty of £100 was issued to WBL on 18 August 2014;
 - (b) A further flat rate penalty of £100 was issued to WBL on 18 November 2014.
- (6) In respect of the period ended 31 July 2014:
 - (a) A flat rate penalty of £500 was issued to WBL on 18 August 2015;
 - (b) A further flat rate penalty of £500 was issued to WBL on 17 November 2015.
- (7) In respect of the period ended 31 July 2015:
 - (a) A flat rate penalty of £500 was issued to WBL on 16 August 2016;
 - (b) A further flat rate penalty of £500 was issued to WBL on 16 November 2016.

INCORRECT PENALTIES ISSUED

9. HMRC had set out in their statement of case and reiterated at the hearing, that the penalties issued in respect of the period ended 31 July 2014 had been incorrectly issued at the higher rate of £500, rather than £100.

10. HMRC submitted that the conditions for issuing the higher rate penalty under paragraph 17(3) had not been met because there were not three consecutive late filings at this point, Therefore, they should have been issued at £100.

11. HMRC invited us to use our powers under section 100B(2)(iii) of TMA 1970 to reduce the amount of the penalties for that period to £200, down from the £1000 issued.

12. We address this in our decision below.

PARTIES ARGUMENTS

13. Mr Evans submitted that WBL had a reasonable excuse for the late filing of the three tax returns.

14. He submitted that it had not been possible for Mr Evans to submit the tax returns because:

- (1) He wanted to go through the returns with Mr Phillimore, who was the director of WBL, before submitting them, in order to discuss matters relating to the future of the company and the impending disposal of a property;
- (2) he had not been able to get firm instructions from Mr Phillimore who had been ill for some time and was suffering from dementia;
- (3) there were no other directors with whom he could discuss matters;
- (4) when Mr Phillimore's daughter, Miss Roma Phillimore, was appointed director, she was not involved in the day to day running of the business and therefore was not in a position to give him clear instructions on filing the returns;
- (5) he became aware of the extent of Mr Phillimore's difficulties with dementia in January 2014 when he was trying to finalise returns with him;
- (6) Mr Evans had taken over responsibility for dealing with the urgent affairs of WBL from at least February 2014, as evidenced from the correspondence between Mr Evans and various third parties, e.g. a local council and surveying company, who were providing services to WBL;
- (7) there was a difficult family dynamic surrounding Mr Phillimore, which led to Mr Evans being barred from attending the house Mr Phillimore was living in with his then partner;
- (8) Mr Evans had also been prevented from obtaining Mr Phillimore's medical records by Mr Phillimore's partner; and
- (9) When the returns were submitted in 2018, they were signed off by Miss Phillimore, who had, following her father's death, had then taken on the day to day running of WBL.

15. HMRC submitted that, with the exception of the incorrectly issued penalties for 2014, the penalties were validly issued in accordance with the legislation. The penalties for 2014 would have been validly issued at £200.

16. HMRC submitted that WBL did not have a reasonable excuse for the late filing of these returns.

17. Mr Gyasi drew attention to the four-stage test in *Perrin v HMRC* [2018] UKUT 0156 TC.

18. With regards to the second stage of the test, whether the facts asserted are proven, HMRC submits that the evidence is not sufficient to establish if a reasonable excuse existed because:

- (1) This evidence is merely conversation between two parties, no medical records or supporting evidence have been provided by the Appellant.
- (2) The Appellant has failed to provide evidence as to what illness the director suffered from, when the illness began, whether it was one continuous illness or multiple separate illnesses.
- (3) The Appellant has failed to demonstrate the impact the director's illness had on the company which prevented the returns being filed on time.

19. With regards to the third stage of the test, HMRC submit that the action taken was not a reasonable one:

- (1) Mr Evans, who was also employed by an accounting and tax consulting practice, who are the agents representing WBL in this appeal, was appointed as company secretary on 24 July 2014;
- (2) Miss Roma Phillimore was appointed a director on 5 September 2014;
- (3) The first penalty was issued while Mr Evans was company secretary, but before Miss Phillimore was appointed;
- (4) All the remaining penalties were issued while they were both in post;
- (5) WBL continued to fill annual accounts at Companies House, therefore WBL must have had the records and resources to file their corporation tax returns; and
- (6) Mr Evans, being employed an Accountancy and Tax Consultancy firm would be expected to understand the obligations of the Appellant company to file the CT returns on time.

20. On the fourth stage of the test, HMRC submit that, in the event the Tribunal are minded to agree with the Appellant that a reasonable excuse existed, this excuse was not remedied without unreasonable delay after the excuse ceased because:

- (1) It is evidenced from the contents of a letter apparently sent by WBL on 3 January 2017 (albeit not received by HMRC until a copy was provided later) that WBL had, at that date, all the information necessary to complete the returns, because the letter included corporation tax computations showing losses;
- (2) WBL's original appeal to the FTT was submitted on 6 August 2017; and
- (3) The returns were not submitted until 12 June 2018, 1 year 5 months from their initial letter, 10 months from their appeal to the Tribunal and 7 months from the death of the director.

DISCUSSION

21. First, we must establish whether the penalties were validly issued by applying the law to the facts presented.

22. The filing dates for the corporation tax returns for WBL were as follows:

- (a) Period ended 31 July 2013: 31 July 2014;
- (b) Period ended 31 July 2014: 31 July 2015;
- (c) Period ended 31 July 2015: 31 July 2016.

23. Since the returns were not filed until 12 Jun 2018, all the returns were filed more than 3 months late, such that the higher penalty applied to them.

24. We note HMRC's observations regarding the penalties issued in relation to the period ended 31 July 2014 and accept their submission that this was done in error and that the maximum penalty for that period is therefore £200, not £1000.

25. Therefore we find that the penalties were issued in accordance with the law.

26. Turning to the question of whether WBL have shown that there was a reasonable excuse for the failure to file the returns.

27. As set out in Upper Tribunal, in *Perrin*, we must take a four-step approach to considering whether WBL has a reasonable excuse:

- (1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse;
- (2) Second, decide which of those facts are proven;
- (3) Third, decide whether, viewed objectively, those proven facts do amount to an objectively reasonable excuse for the default, e.g. by asking the question “was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?”; and
- (4) Fourth, if the first three steps have established a reasonable excuse, was it remedied without unreasonable delay when the excuse ceased.

28. Considering the first stage, Mr Evans’s submissions were that it was Mr Phillimore’s ill health and subsequent death that constituted the reasonable excuse.

29. On the second stage, following a direction from the Tribunal prior to the hearing of this case, Mr Evans had provided evidence to support the defence of reasonable excuse. This evidence consisted of a large bundle of correspondence which showed Mr Evans dealing with a number of matters on behalf of WBL. The matters included chasing rent arrears, dealing with the payment of bills, dealing with the administration of disposals of properties, as well as dealing with issues relating to the estate of Mr Phillimore.

30. It is clear from the correspondence and the evidence given by Mr Evans at the hearing that he was, to all intents and purposes running WBL from February 2014, dealing with its day-to-day affairs, on behalf of Mr Phillimore.

31. We also accept Mr Evans’ evidence that he struggled to get clear instructions from Mr Phillimore.

32. We did not see any documentary evidence related to Mr Phillimore’s health, but we accept Mr Evans’ oral evidence that he was suffering from dementia and was therefore not in a position to give Mr Evans clear instructions.

33. We do, however, agree with HMRC that further evidence of what the impact of this was on WBL was not provided. Witness evidence or contemporaneous evidence from WBL’s internal records were not available to us.

34. We turn to the third stage of the test, considering whether what WBL did at that time was, objectively reasonable, given the ill-health of Mr Phillimore.

35. We find that it was not. Despite pressing questions at the hearing, Mr Evans was not able to explain why the tax returns were not submitted for so many years or why they could not be submitted by him as agent or secretary. There may have been an excuse during 2014 when the extent of Mr Phillimore’s ill health was becoming apparent and WBL had not had an opportunity to make other arrangements. However, when it became clear that this was a situation that would continue for the foreseeable future, it was not a reasonable course of action to allow the non-submission of the returns to continue for so long, particularly in circumstances where the operations of the business were clearly continuing and there were two other officers of the company.

36. Finally, for the avoidance of doubt, if we had found that there was a reasonable excuse during the period of Mr Phillimore’s ill-health, we do not consider that it was remedied without unreasonable delay. WBL was in a position to supply tax computations to HMRC in a letter in January 2017 and the same information would have enabled tax returns to be submitted at that point in time. The further delay of 18 months was not a reasonable time frame to remedy the continuing failure.

DISPOSITION

37. For the reasons set out above, the appeals against late filing penalties are dismissed and therefore the following penalties stand:

- (1) Accounting period ending 31 July 2013: £200;
- (2) Accounting period ending 31 July 2014: £200; and
- (3) Accounting period ending 31 July 2015: £1000.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

38. 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.

**ABIGAIL MCGREGOR
TRIBUNAL JUDGE**

Release date: 13th October 2023