



TC02924

Appeal number: TC/2013/04269

INCOME TAX – penalty for late submission of tax return – belief that tax return had been submitted not reasonably held -no reasonable excuse- appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RICHARD WORSNOP

Appellant

- and -

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

TRIBUNAL: JUDGE BARBARA KING

The Tribunal determined the appeal on 20 September 2013 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 20 June 2013 (with enclosures) and HMRC's Statement of Case submitted on 26 July 2013 (with enclosures).

DECISION

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The issue

1. The appellant appeals against a penalty of £100 imposed by the respondents “HMRC” for the late filing of a self assessment tax return for the tax year which ended on 5 April 2012. An electronic return was required to be filed by 31 January 2013.

2. HMRC say that the appellant did not file his Tax Return until 21 February 2013. The appellant says he completed it online on 31 January 2013 and thought it had also been submitted.

The evidence

3. The appellant wrote a letter on 21 February 2013 stating that on 31 January 2013, when he had completed his tax return he went to download a ‘pdf’ of it and was not then sent back to a ‘submit’ page. He found the process confusing but thought that it was complete.

4. In his Notice of Appeal, written in June 2013 the appellant states that he was unaware of the distinction between a form being ‘complete’ and being ‘submitted’. He attempted to download the ‘pdf’ of the form but was unable to do so and the screen became unresponsive. He was unable to return to the previous screen but as he considered the process was complete he thought that he had nothing further to do. He understood ‘complete’ to refer not only to the filling-in of the assessment form but to the whole process.

5. The appellant says he believed, throughout the period from 31 January 2013 to receipt of a penalty notice, that he had completed all that was required of him. He argues that failing to submit the form after it was completed did not show a lack of reasonable care stating:-

‘If I am unaware that a distinction exists between the state of the form being ‘complete’ (as stated on the website) and being ‘submitted’ that is not a lack of reasonable care; rather, it represents a misunderstanding caused by ambiguity in the meaning of ‘complete.’

6. A Statement of Case prepared by HMRC was submitted to the Tribunal for this hearing. This was accompanied by a print out from HMRC website and a number of computer screen ‘print outs’ from an on line filing demonstrator. The website includes terminology such as ‘you can complete your tax return at your own pace’ and the tax return can then be saved on line. There is a reminder that a tax return still needs to be submitted after it has been saved.

7. HMRC state that when a self assessment tax return is successfully filed on line, the person filing the return receives an instant acknowledgement.

8. The appellant filed tax returns electronically for the years 2007-08 to 2010-11.

Findings

5 9. I am satisfied that the appellant completed his tax return on 31 January 2013 and that he intended to submit it on the same day. I find that he failed to do so and that it was not then submitted until after his failure had been drawn to his attention by a penalty notice.

10 10. The appellant says he mistakenly believed, throughout the period between 31 January 2013 and 21 February 2013 that he had done all that was necessary. Was that mistaken belief reasonably held?

15 11. The Tribunal has limited jurisdiction in penalty appeals which reflects the purpose of the legislation of ensuring that persons file their returns and pay their tax on time. The Tribunal has no power to mitigate the penalty. The Tribunal can either confirm the penalty or quash it if satisfied that the appellant has a reasonable excuse for his failure. The appellant has the obligation of satisfying the Tribunal on a balance of probabilities that he has a reasonable excuse for not filing the return on time.

20 12. In considering reasonable excuse the Tribunal examines the actions of the appellant from the perspective of a prudent tax payer exercising reasonable foresight and due diligence and having proper regard for his responsibilities under the Tax Acts.

25 13. The appellant does not say why he waited until the last possible date for filing before attempting to do so. A reasonable person might consider that the process might take longer on the last day and that any problems might not be rectifiable within the time limit.

30 14. The appellant argues that the word 'complete' confused him into believing that the 'process' was complete. I find that the word 'complete' is used in conjunction with many forms and application and just because a form is completed does not mean that the process is complete. No job application is made if a completed form is not received by an employer. No examination is passed if a completed paper is not handed in. I find that it is not reasonable to assume that completing a form indicates that the process is complete. The appellant did not receive any confirmation on line that his return had been received.

35 15. The appellant has completed and submitted his tax returns electronically in previous years. The submission of tax returns for the years 2007-08 to 2010-11, without any history of penalty means that the appellant had on four earlier occasions been successful in completing the filing of his tax return on line.

16. In his letters the appellant explains that there was a problem with his procedure at the time he was trying to file his return on line. He was unable to print a copy of his

return and the screen became unresponsive. I find these matters should have alerted a reasonable person to consider that there had been a problem with his submission and it was unreasonable for him to assume that the return had been submitted. I would have expected a reasonable person, particularly one who has been through the procedure several times before, to have logged into his tax return again to see whether an acknowledgment or receipt had been put on the site.

17. In the absence of any kind of acknowledgement or any form of wording which he could have printed off to prove that he thought the filing had been successful, I find that it was not reasonable for the appellant to believe this. His mistaken belief was not therefore reasonably held.

18. The appellant has not shown a reasonable excuse.

Decision

19. The appeal is dismissed and the penalty of £100 is confirmed

20. 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.

**BARBARA KING
TRIBUNAL JUDGE**

RELEASE DATE: 2 October 2013