



**TC03088**

**Appeal number: TC/2013/04186**

*Penalties – PAYE – late lodging of P35 – whether reasonable excuse  
– No – late Notice of Appeal – Sections 49, 98A, and 118 TMA –  
Appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**AWAZ FM LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE KENNETH MURE, QC  
HELEN M DUNN, LLB**

**Sitting in Wellington House, 134-136 Wellington Street, Glasgow on Friday  
15 November 2013**

**Appellant: Mr H Ahmed, FCCA**

**Respondents: Mrs L McGuigan, Officer of HMRC, for Respondents**

**© CROWN COPYRIGHT 2013**

## DECISION

5

This appeal is against penalties of £1200 imposed in respect of the late lodging of the P35 form for 2008/09, which was due by 19 May 2009. Also, the Notice of Appeal in this matter was lodged late.

10 1. Evidence was given on behalf of the appellant company by Mr E Malik, one of its directors. He explained that the appellant company is a small radio station, serving the Asian community in an area of Glasgow. At the relevant time it had three paid employees, whose salaries were met from government funding. Otherwise the station operated with unpaid volunteers. It is non-profit making. Most significantly, it  
15 employed a chartered accountant, Mr Moughal, of KKMJ Chartered Accountants, to prepare its accounts and administer its tax affairs. The directors relied on him to carry out these functions. They were concerned on the receipt of the first penalty notice but their concerns had been allayed by Mr Moughal's assurances that matters were in order. He showed them a copy of Folio 16, a copy P35 dated 16 May 2009.  
20 Mr Moughal claimed to have submitted this timeously and that the likely explanation for the penalty notice was an administrative backlog at HMRC.

2. In view of that explanation we considered it appropriate to proceed to hear the merits of the appeal by reference to Section 49(2)(b) TMA. A professional agent had been employed by the appellant and a plausible explanation given by him for the  
25 issuing (incorrectly, as he had claimed) of the penalty notice. We note the guidance of Sir Stephen Oliver, QC in *Ogedegbe v HMRC* [2009] UKFTT 364 (TC), at para 7, where he noted the relevance of there being an arguable case for the appeal when the Tribunal is invited to extend time.

3. On the receipt of further penalty notices the directors of the appellant became  
30 concerned even although Mr Moughal continued to assure them that matters were in order and that it was HMRC's error. They then engaged another accountant, Mr Ahmed, who represented it today. After delays and difficulties occasioned by Mr Moughal, Mr Ahmed finally received all the relevant correspondence and submitted the P35 and then the Notice of Appeal and applied to the Tribunal for this  
35 hearing.

4. The foregoing factual narrative was not challenged in cross-examination. We ourselves found Mr Malik an entirely credible and candid witness.

5. On behalf of HMRC Mrs McGuigan submitted that a *reasonable excuse* for purposes of Section 118 TMA (which had to exist throughout the period of default)  
40 had not been demonstrated. Default had arisen from the neglect of Mr Moughal. It was trite law that reliance on a third party was not a *reasonable excuse*. She founded upon *dicta* in *Third Stone Limited v HMRC* [2010] UKFTT 234 (TC), at para 25.

6. In reply Mr Ahmed submitted that there was a *reasonable excuse* in the whole circumstances. The fault was of a professional agent engaged by his client. The terms of Folio 16 were accepted at face value. This was a perfectly reasonable conclusion. The document was convincing. His clients were a small concern without  
5 real financial substance, and penalties totalling £1200 represented a huge liability. Mr Ahmed stressed that the appellant had met all its other tax liabilities timeously.

## Decision

7. While we have considerable sympathies for the appellant in this case, we consider that Mrs McGuigan's argument is well-founded. In a sense the appellant acted very responsibly by engaging a chartered accountant to administer its financial and tax affairs. However, that responsibility remained with the company and its directors. It is well-settled that the failure of a third party does not amount to a *reasonable excuse*. We take account in this context of the document, Folio 16, which might have encouraged Mr Malik to be satisfied with Mr Moughal's explanation. A *reasonable excuse* must continue throughout the period of default. It seems that no further investigation was made at that stage by the appellant's directors in spite of the issuing of the penalty notices by HMRC. Given the formidable hurdle which confronts the taxpayer in this context, we consider that the appeal must be disallowed.

8. 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.

**KENNETH MURE, QC**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 27 November 2013**