



TC03403

Appeal number: TC/2013/05068

*PAYE end of year returns– appeals out of time allowed for some periods -
was there reasonable excuse - alleged "scam" by third party adviser -
insufficient evidence - appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR SHAZADA AFTAB HUSSAIN SHAH

Appellant

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

Respondents

**TRIBUNAL: JUDGE JUDITH POWELL
MRS LYNNETH SALISBURY**

Sitting in public at Bedford Square on 5 December 2013

Mr Zeeshan Shah for the Appellant

**Mrs Weare, presenting officer for HM Revenue and Customs, for the
Respondents**

DECISION

1. This is an application for a late appeal against a total of ten decisions of the Respondents for the years 2008 – 2009 to 2011 – 2012 inclusive and a substantive hearing of that part of the appeal for which the application was granted. The decisions relate to the Appellant's failure to file end of year PAYE returns (known as Forms P35) on time. The decisions were all in relation to the imposition of penalties for these failures and there were three penalties imposed in each of 2008 – 2009, 2009 – 2010 and 2010 – 2011 and one decision in relation to 2011 – 2012.

2. The appeals were all made late and the Appellant applied to the Tribunal for permission to make a late appeal which was opposed by the Respondents. We agreed to this application in so far as it related to the decisions made for 2008 – 2009 and 2009 – 2010 but did not agree to hear a late appeal for the decisions made for the latter two years although this was of relatively less financial significance to the Appellant since the total penalties for each of the latter two years amounted to £100 in view of the tax and NIC payable in those years. Our reason for not allowing the late appeal for the later periods is recorded below but we should say here that we found that by February 2010 the Appellant was taking responsibility for the submission of the PAYE returns personally. We were told that he took personal responsibility at all times for the payment of PAYE and NIC.

3. The factors which the Appellant says explain why the appeals were made late are similar to those put forward as constituting a reasonable excuse for the failure to submit the returns on time.

4. Mr Zeeshan Shah, on behalf of the Appellant, explained to the Tribunal that the Appellant had only one employee who was a nanny. The Appellant is a medical doctor and he relied on a third party, whose name was not given to us, to deal with PAYE compliance matters. We were given to understand that the Appellant himself accounted for the PAYE and NIC and did not leave this task to the third party. The third party was described for the Appellant as a tax adviser.

5. The Appellant was initially registered for PAYE under the simplified deduction scheme which is a less complex system available to some employers of domestic employees but only available where the employees earnings fall below an upper limit which was exceeded in this case. The error was discovered in 2008 (we were not told exactly when) and we were also told that penalties imposed for the year 2007 – 08 were waived. We were told that the Appellant had contacted HMRC himself when he received a letter asking why his return for 2007 -2008 was delayed even though the third party had told him that a return was not due from a member of the simplified scheme.

6. The Respondents showed us a computer printout which recorded their contact with the Appellant and indicating when they had sent out routine correspondence. There was no correspondence with a third party acting on behalf of the Appellant and no record of a telephone conversation with such a person. This, it was said on behalf

of the Appellant, was unsurprising because the Appellant was the “victim of a scam”. The third party had taken no action to deal with the Appellant’s PAYE obligations and although the Appellant had considered reporting him to the police (and did have an initial conversation with them) he decided not to proceed with any formal action because the third party had left the country.

7. There was some confusion at the hearing about the time when the Appellant took the responsibility for compliance matters into his own hands but the records show that the return for 2008 – 2009 was submitted on 6 February 2010 and Mr Shah for the Appellant said at the hearing that the Appellant took responsibility for compliance in 2010 which is consistent with his submission of the 2008 -2009 return in February 2010. This is not consistent with what is said in the notice of appeal that the Appellant took matters into his hands in 2011 – 2012. Looking at what was done in February 2010 we concluded that the date given in the notice of appeal must have been an error if the Appellant was dealing with 2008 -2009 return by February 2010 and that he knew by February 2010 about the requirement to submit Forms P35.

8. In his application for the appeal to be heard late the Appellant said the delay was due to his unsuccessful efforts to obtain records from the third party to whom he passed correspondence from the respondents without keeping copies. With some hesitation we accepted that this might explain the delay in making an appeal against the penalties imposed for 2008 -2009 and 2009 – 2010 but find it extremely unlikely that the Appellant sent the third party anything relevant to making the appeal for 2010 – 2011 and 2011 – 2012 since he was apparently dealing with matters himself by February 2010 and thus before the start of the first of these two latter years. For this reason we granted leave to appeal late against the earlier two years.

9. Mr Shah told us that the Appellant accepted the third party’s explanation that the reminders concerning end of year returns sent to him and the penalty notices issued for 2008 - 2009 on 28 September 2009, 24 January 2010 and 10 February 2010 were computer generated errors and that the third party would rectify the situation. He told us the Appellant is a professional man accustomed to practice high standards and assumed the third party would behave in a similar way. The third party was not identified to us, the terms of his engagement were not explained and it is not clear if he was paid by the Appellant and if so on what basis. These facts are surprising; we would have expected a professional man to have available to him (and to provide to us) the credentials of someone who was taking responsibility for compliance on his behalf.

10. The Respondents say that the Appellant would have received notices to file returns in February before the end of the relevant year followed by a reminder to file in June after the year end if no return had been filed by May 19 after the year end. They also say that, apart from the 2008 – 2009 return filed in February 2010, further returns were not made until 2013 despite the Appellant having written to the Respondents in May 2012 appealing against penalties for 2008 – 2009 to 2010 – 2011 inclusive and being made aware by letter from the Respondents on 6 June 2012 of the still outstanding returns for 2009 – 2010 and later years.

11. The question for us is whether the Appellant had a reasonable excuse for making the returns late and if so whether this continued throughout the period of default. We had no hesitation in deciding that the Appellant had no reasonable excuse for the delay in making the return for the year 2009 – 2010 on time. The return would have been due in May 2010 and in February 2010 the Appellant had completed a return for 2008 – 2009. He could and should have made himself familiar with his obligations for later years at the same time as dealing with the 2008 - 2009 return. We considered whether he had a reasonable excuse for 2008 – 2009. We listened to what Mr Shah said about the unnamed third party and the Appellant’s reliance on him. If we had had the opportunity of hearing full details about this person and the terms of his engagement we might have concluded that the Appellant had a reasonable excuse. The difficulty we had was that no details were given to us of this person, there is no correspondence with him (or her) and we simply cannot establish whether it was reasonable in the circumstances for the Appellant to be misled as he says he was. We find that he did not have a reasonable excuse for 2008 - 2009. We dismiss the appeal against the Respondents decisions to impose penalties for 2008 - 2009 and 2009 – 2010.

12. 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.

**JUDITH POWELL
TRIBUNAL JUDGE**

RELEASE DATE: 10 March 2014