



TC05238

Appeal number: TC/2015/07170

*INCOME TAX – late filing of individual tax return – whether reasonable
excuse – no – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Mrs J Harris

Appellant

- and -

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

TRIBUNAL: JUDGE DR K KHAN

The Tribunal determined this appeal on 20 June 2016 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 15 December 2015 and HMRC's Statement of Case of 13 January 2016.

DECISION

Preliminary matter

- 5 1. This appeal is made out of time and is not opposed by HMRC. The Tribunal determined that the appeal can be considered out of time given the Appellant stated that correspondence with HMRC may have been lost or not delivered and as such, in the interests of fairness, the appeal should be considered.

Introduction

- 10 2. This is an appeal against a penalty issued under Schedule 55 of the Finance Act 2009, for the late submission of a Self-Assessment Return for the year 2012-2013.
3. The Notice to file for the year ending 5 April 2013 was sent to the Appellant on 6 April 2013 with a filing date of 31 October 2013 for non-electronic returns and 31 January 2014 for an electronic return.
- 15 4. The Appellant's electronic return for the year 2013 was received on 27 February 2014. As a return was not received by the filing date, HMRC issued a Notice of Penalty Assessment on or around 18 February 2014 in the amount of £100.

Legislation

- 20 5. Section 8(1D)TMA 1970 states that for the year ending 5 April 2013 a late filing penalty is chargeable where a Taxpayer is late in the filing of their individual tax return.
6. Pursuant to paragraph 3 Schedule 55 Finance Act 2009, if the return is not received by the filing date a £100 penalty is chargeable.
- 25 7. Under paragraph 23(1) Schedule 55 Finance Act 2009, an appeal against a Late Filing Penalty would be successful where the Taxpayer shows there is a reasonable excuse for the late payment filing.

Appellant's submissions

- 30 8. The Appellant stated in correspondence on 15 January 2015 that her husband had submitted his tax returns on 15 January 2014 but while his return was received her return was not received by HMRC. She said that HMRC offered no training on their computer system and the system itself had problems as is evident from the fact that her filing was not acknowledged.
- 35 9. The agent of the Appellant, Mr P Harris, also provided reasons for the appeal. He stated that the HMRC system was not working properly and the fine was appealed immediately. There was no response from HMRC. Efforts were made to submit the return on 15 January 2014 and therefore the return were in the system and were not late in submission. While Mr Harris received a successful receipt acknowledgement

for his return no such confirmation was provided for the filing of his wife's, the Appellant.

10. He said in summary that the system did not work properly nor provide proper instructions or training to Taxpayers. It was inequitable to have the fines imposed.

5 HMRC's submissions

11. HMRC say that there was no filing of the annual Self-Assessment Return before the due date. The Appellant had indicated to HMRC that she wished to claim mileage expenses incurred in connection with her employment and therefore requested a return be sent to her. HMRC re-activated the Self-Assessment record of the Appellant on 6 April 2013 issuing a Notice to File to the Appellant to complete a 2013 return. Since the Appellant was no longer employed but had started self-employment in a sales consultancy information was provided to the Appellant to deal with her tax returns and filing.

12. In February 2014 the Appellant telephoned HMRC to enquire why she had received a Late Filing Penalty Notice. She was advised to check online to make sure her return was submitted and that she received a submission reference. On 24 March 2014 she said that she did not receive an acknowledgement when her return was filed. HMRC carried out their routine checks and following completion stated that since the Appellant had not received a confirmatory message the return had not been filed as she had understood.

13. HMRC contended their online system was working well but that it was not properly operated by the Appellant when filing her Self-Assessment Return on time.

14. HMRC also confirmed that they had considered a special reduction but their view is that there were no special circumstances which would allow them to reduce the penalty. HMRC do not consider the absence of any separate learning material where full guidance is provided on screen as a special circumstance for not submitting a return online.

Conclusion

15. The Tribunal has looked at the facts which have been presented by the Appellant and HMRC. The Tribunal has come to the conclusion that it is improbable that the HMRC system would not generate a confirmatory message where a return was submitted online. It is quite clear that the Appellant's husband submitted his return and received a confirmatory message but it is difficult to understand why a similar message would not have been generated if the Appellant had submitted her return on time.

16. Therefore the Tribunal is satisfied that no return was received by the HMRC system within the deadline given that there was no confirmation provided to the Appellant by the online filing system.

17. It is quite possible that the Appellant may have attempted in good faith to file the return online and believed that this was correctly done but it is clear that it was an unsuccessful attempt. HMRC online filing system has proper instructions on how the return should be submitted and states that “before submitting your return you can view, print and save a copy of the return to your own computer”. When the return is successfully submitted to HMRC the customer receives an onscreen message to confirm receipt and a confirmatory email is sent to their address. The fact that these messages were not received should have alerted the Appellant to the fact that the return had not been successfully filed. It is possible that the online filing system is difficult to use for some Taxpayers. However there is sufficient explanatory material and help available to assist Taxpayers to get their filing right.

18. On a balance of probabilities therefore the Tribunal has come to the conclusion that there is no reasonable excuse for the late filing and is satisfied that the penalty imposed is correct.

19. 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.

DR K KHAN
TRIBUNAL JUDGE

RELEASE DATE: 12 JULY 2016