



TC05760

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Appeal number: TC/2013/03929

*Income Tax - Individual Tax Return - Late filing Daily Penalties - 6 Month
Penalty - Reasonable Excuse - No- Appeal dismissed*

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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MOHAMMED IDRIS

Appellant

- and -

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

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TRIBUNAL: JUDGE JENNIFER A TRIGGER

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The Tribunal determined the appeal on 7 April 2017 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 (with enclosures) dated 3 June 2013 and HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 3 February 2017.

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DECISION

Introduction

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1. This is an appeal against Late Filing Daily Penalties (the "Penalties") imposed under Paragraph 4 of Schedule 55 Finance Act (the "FA") 2009 and a 6 month Late Filing Penalty (the "6 month Penalty") imposed under Paragraph 5 of Schedule 55 FA 2009 following the late filing of an Individual Tax Return for the year ending 5 April 2011.

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2. The First-tier Tribunal directed that the appeal should be stood over until the decision of the Court of Appeal in the case of *Donaldson v Commissioners for Her Majesty's Revenue and Customs [2016] EWCA Civ. 761* (the "Donaldson case") was finalised. Thereafter, the Supreme Court refused to permit any further appeal in the Donaldson case and accordingly, the Appellant's appeal was listed for determination.

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3. On 7 April 2017 the Tribunal decided that the appeal was unsuccessful.

Background Facts

4. For the year ending 5 April 2011 Mr Mohammed Idris (the "Appellant") was required to file a return either electronically by 31 January 2012 or non-electronically by 28 October 2011. The Appellant chose to file non- electronically. The return was received by HMRC on 31 July 2012 and processed on 10 August 2012.

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5. As the return was not received by the filing date HMRC issued a notice of penalty assessment on or around 14 February 2012 in the amount of £100.00. This penalty was not appealed against.

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6. As the return had still not been received by HMRC three months after the penalty date, HMRC issued a notice of daily penalty assessment on or around 7 August 2012 in the sum of £900.00, the Penalties, calculated at the daily rate of £10.00 for 90 days. A further 6 months elapsed after the penalty date. HMRC then issued a notice on or around 7 August 2012 in the sum of £300.00, the 6 month Penalty.

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7. On 28 August 2012 the Appellant's then agent, Khan & Co, appealed against both the Penalties and the 6 month Penalty to HMRC. This appeal was rejected by HMRC by letter dated 14 September 2012 but, in the same letter, HMRC offered a review.

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8. The then Agent requested a review which was carried out by HMRC and notified to the Appellant and the then Agent by letter dated 27 November 2012. The conclusion of the review was that the decision of HMRC to impose the Penalties and the 6 month Penalty was confirmed.

9. By Notice of Appeal dated 3 June 2013 the then Agent appealed the Penalties and the 6 month Penalty to HM Courts & Tribunals Service. The Appellant accepted that the return had been filed late but claimed that there was a reasonable excuse for the accrual of the Penalties and the 6 month Penalty.

5 The Appellant's Case

10 The penalty rules changed without any notification.

11 The Appellant had to wait for information about interest paid to lenders.

12 Other taxi drivers had been charged only £300.00 for filing the return late for 2010-2011.

10 Findings of Fact.

13 That the Appellant had filed the return late.

14 That HMRC had correctly calculated the Penalties and the 6 month Penalty.

15 That the Appellant had failed to establish a reasonable excuse.

16 That HMRC had made a decision required by Paragraph 4 (1) (b) of Schedule 55 FA 2009 to charge the Penalties and the 6 month Penalty.

17 That HMRC had given notice required under Paragraph 4 (1) (c) of Schedule 55 FA 2009 specifying the date from which the Penalties and the 6 month Penalty were payable.

18 That HMRC had failed to specify the period in respect of which the Penalties and the 6 month Penalty were assessed in the notice of assessment as required under Paragraph 18 of Schedule 55 FA 2009. Despite the omission of the correct period, for which the Penalties and the 6 month Penalty had been assessed in the notice of assessment, the validity on the notice was not affected.

19 That the Penalties and the 6 month the Penalty were not criminal in nature for the purpose of Article 6 of the European Convention on Human Rights (the "ECHR.")

20 That the Penalties and the 6 month Penalty were not disproportionate and the penalty regime was proportionate in its aim.

21 That there were no special circumstance which would support a Special Reduction under Paragraph 16 of Schedule 55 FA 2009.

The Legislation

22 Taxes Management Act 1970 section 8.

23 Schedule 55 FA 2009 Paragraphs 1, 3, 4, 5, 6(1), 6(5), 16, 18, 20, 21, 22 and 23.

Reasons for the Decision

- 5 24 The return was filed non-electronically on 31 July 2012 when the correct date for non- electronic submission was 31 October 2011.
- 10 25 As the return was late the Penalty was calculated under Paragraph 3 of Schedule 55 FA 2009 which specified the amount as £100.00 which was not disputed. The Penalties were calculated under Paragraph 4 of Schedule 55 FA 2009 at £10.00 per day. The return was filed 90 days late. The 6 month Penalty was calculated under Paragraph 5 of Schedule 55 FA 2009 at £300.00.
- 15 26 The Appellant claimed as a reasonable excuse that he had never been told by HMRC that the Penalties and the 6 Month Penalty would be levied if he was late in filing the return for the tax year ending 5 April 2011. The Tribunal did not accept the Appellant's assertion.
- 20 27 The Appellant had completed self-assessment tax returns since 1996-1997 and would, in the opinion of the Tribunal, be aware of his obligations and, also, of the implications of failing to file a return on time because he had been charged late filing penalties for tax years 2001-2002, 2002-2003, 2005-2006, 2006-2007, 2007-2008 and 2009-2010.
- 25 28 The new penalty regime was introduced in April 2011 and had been advertised widely. There was information on HMRC's website, in the media and in the public domain by means of posters, trade magazines and the like. The 2010-2011 tax return issued to the Appellant would clearly have showed the filing deadline and the amount of each penalty that could be levied. The Appellant was sent a 30 day and a 60 day reminder that listed all the new penalties as well.
- 30 29 The Appellant had employed a tax agent whom the Tribunal considered would have advised him of the new penalty regime.
- 30 30 If the Appellant did not have all the figures to complete the return before the deadline this could not be a reasonable excuse because a taxpayer, in those circumstances, can provide provisional figures to HMRC to prevent missing the deadline and incurring a penalty.
- 31 31 The fact that another taxpayer was charged a lesser penalty was irrelevant because each case was decided on its own merits.
- 35 32 A flyer was contained with the 2010-2011 also return which explained the changes to the penalty regime.
- 33 The Tribunal was bound to follow the decision in the Donaldson case in respect of the decision of HMRC to impose the Penalties and the 6 month

Penalty and the giving of notice in respect of both and similarly the Tribunal relied on the Donaldson case on the issue of HMRC's omission to specify the relevant period.

5 34 The failure to file the return was not criminal in nature but administrative and no proof of qualitative misconduct was required. The Penalties and the 6 month Penalty were simply a means of securing the production of timely returns. So Article 6 of the ECHR did not apply.

10 35 The Penalties and the 6 month Penalty were neither harsh nor plainly unfair. The Tribunal relied on *International Roth GmbH v SSHD [2002] EWCA Civ. 158* in reaching this decision.

36 There were no exceptional, abnormal or unusable circumstances nor was there something out of the ordinary run of events to justify a Special Reduction.

37 For the reasons given the appeal was not successful. The Appellant must pay to HMRC the sum of £1200.00

15 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
20 "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

25 **JENNIFER A TRIGGER**
TRIBUNAL JUDGE

RELEASE DATE: 10 APRIL 2017