



TC05864

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Appeal number: TC/2013/06595

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

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**FIRST-TIER TRIBUNAL
TAX CHAMBER**

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MR IAN SHARP

Appellant

- and -

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

TRIBUNAL: JUDGE JENNIFER A TRIGGER

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25 **The Tribunal determined the appeal on 24 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 dated 13 September 2013 (with enclosures) and HMRC's Statement of
Case (with enclosures) acknowledged by the Tribunal on 10 February 2017.**

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DECISION

Introduction

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1. This is an appeal against a Late Filing Penalty (the “Penalty”) Daily Penalties (the ”Penalties”) and a 6 Month Penalty (the “6 Month Penalty”) imposed under Paragraphs 3, 4 and 5 of Schedule 55 Finance Act (the “FA”) 2009 for the late filing of an Individual Tax Return for the tax 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 24 April 2017 the Tribunal decided that the appeal was unsuccessful.

Background Facts

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4. For the year ending 5 April 2011 Mr Ian Sharp (the “Appellant”) was required to file a return either electronically by 31 January 2012 or non-electronically by 31 October 2011. The Appellant chose to file non-electronically. The return was received by HMRC on 19 October 2012.

5. As the return was not received by the filing date HMRC issued a notice of penalty assessment on or around 21 February 2012 in the amount of £100.00.

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6. As the return had still not been received by HMRC three months after the penalty date, HMTC issued a notice of daily penalty assessment on or around 4 September 2012 in the sum of £900.00, the Penalties, calculated at the daily rate of £10.00 for 90 days.

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7. As the return has still not been filed 6 months after the penalty date, HMRC issued a notice of penalty assessment on or around 4 September 2012 in the amount of £300.00, the 6 Month Penalty.

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8. The Appellant appealed to HMRC against the Penalty, Penalties and the 6 Month Penalty to HMRC on 7 July 2012. The appeal was rejected by letter dated 23 August 2012 because the 2010-2011 tax return had not been received. After the tax return was received, on 19 October 2012, HMRC wrote to the Appellant on 22 November 2012 rejecting his appeal but offered a review.

9. On 18 January 2013 HMRC sent to the Appellant, at his request, a copy of his appeal.

10. On 13 September 2013 the Appellant lodged a Notice of Appeal to HM Courts and Tribunal Service.

The Appellant's Case

11. The Appellant accepted that the return had been filed but claimed that there was a reasonable excuse.

Findings of Fact.

5 12. That the Appellant had filed the return late.

13. That HMRC had correctly calculated the Penalty, the Penalties and the 6 Month Penalty.

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

10 15. That HMRC had made a decision required by Paragraph 4 (1) (b) of Schedule 55 FA 2009 to charge the Penalties.

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

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

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

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

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

The Legislation

25 21. Taxes Management Act 1970 section 8.

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

Reasons for the Decision

23. The return was filed non-electronically on 19 October 2012 when the correct date for non-electronic submission was 31 October 2011.

30 24. As the return was late the Penalty was calculated under Paragraph 3 of Schedule 55 FA 2009 which specified the amount as £100.00. The Penalties were calculated under Paragraph 4 of Schedule 55 FA 2009 at £900.00. This was assessed at £10.00

per day and the return was filed 90 days late. The 6 Month Penalty was calculated under Paragraph 5 of Schedule 55 FA 2009 at £300.00

25. The Appellant claimed a reasonable excuse in that, he had by mistake completed the 2011-2012 tax return instead the 2010-2011 tax return.

5 26. The Appellant stated that he was confused. He had been notified by HMRC in “September 2011” that he was to return the self- assessment scheme.

27. He missed the January 2012 deadline to file his tax return electronically. When the Appellant received a penalty notice in March 2012 he completed the tax return and assumed that he had completed the 2010-2011 return. The Appellant did not
10 realise the mistake until he was informed by HMRC that the Penalties were accruing.

28. The Appellant maintained that the confusion was caused by HMRC because an HMRC official had not made it clear in or around September 2011, during a conversation, that he should complete the 2010-2011 return and not at that time the 2011-2012 return. Furthermore, when the Appellant downloaded the tax return in
15 March 2012 the only version available was the 2011-2012 return.

29. The Tribunal did not accept that these reasons amounted a reasonable excuse. There were no unusual or exceptional circumstances nor was there any unforeseen event. The Appellant was issued with a paper tax return on 10 November 2011. The return would bear the year to which it related.

20 30. In 2012 when the Appellant filed electronically there was available a 4 year account of the returns he had filed. The Appellant with diligence and foresight could have accessed that record and thereby avoided the mistake in filing the return for the wrong year.

31. The Appellant had been required to file a tax return from 1996 to 2006. He
25 would, in the opinion of the Tribunal, be aware of the filing deadlines and the penalty regime as he had been charged a late penalty for tax years 1996-1997 and 1997-1998.

32. The Appellant did not dispute that he received from HMRC a late filing penalty notice on 21 February 2012 and a reminder on 19 June 2012 together with a further reminder on 17 July 2012 but he did not file the return until 19 October 2012 despite
30 the fact that he must have been aware that HMRC had not received the 2010-2011 return by 17 July 2012 at the latest.

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 giving of notice, similarly the Tribunal relied on the Donaldson case on the issue of HMRC’s omission to
35 specify the relevant period.

34. The failure to file the return was not criminal in nature but administrative and no proof of qualitative misconduct was required. The Penalty, 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.

35. The Penalty, 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.

5 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. The Appellant had made a mistake which would not have occurred if he had acted prudently and with due diligence.

31 For the reasons given the appeal was not successful. The Appellant must pay to HMRC the sum of £1300.00

10 32 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
15 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**JENNIFER A TRIGGER
TRIBUNAL JUDGE**

RELEASE DATE: 10 MAY 2017