[2015] UKFTT 0389 (TC)

TC04571

Appeal number:TC/2015/02913

INCOME TAX – penalties – Schedule 24 Finance Act 2007 – inaccuracy in self-assessment return – carelessness – amount of penalty – special circumstances – suspension of penalty – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

ANTHONY HAVERCROFT **Appellant**

- and -

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

TRIBUNAL: JUDGE JONATHAN CANNAN
MR PETER WHITEHEAD

Sitting in public in Manchester on 30 July 2015

There was no appearance by the Appellant

Ms Joanna Bartup of HM Revenue & Customs for the Respondents

DECISION

Background

1. This is an appeal against a penalty of £266.34 imposed following an error made by the Appellant in completing his self assessment return for 2012-13. HMRC imposed the penalty pursuant to *Schedule 24 Finance Act 2008* on the basis that an inaccuracy in the return was careless on the part of the Appellant.

2. The appeal was listed for hearing by the Tribunal by letter dated 20 May 2015. On 28 July 2015, 2 days prior to the hearing, the Appellant emailed the Tribunal seeking a postponement. The Appellant owns and runs a family business in Leeds known as the Safety Maintenance Company. The email stated that most of his staff were on holiday during that week and that the Appellant had a late urgent booking for a safety course on which the Appellant was required to instruct on the day of the hearing.

3. We were not satisfied that there was any good reason to postpone the hearing. In reaching that conclusion we took into account the following matters:

(1) We inferred that the Appellant would have known about staff holidays for some time before 28 July 2015.

(2) The Appellant appears to have given priority to the late booking over a Tribunal hearing which had been fixed for more than 2 months. The Appellant did not give details of the circumstances as to why the booking was late, or say why it was necessary for him to give it priority over the Tribunal hearing.

(3) The Appellant has set out in detail in correspondence the basis of his case and having regard to the nature of the issues we would be able to take that material into account in deciding the appeal.

(4) The penalty is a relatively modest amount, both in itself and in the context of the Appellant's income which we mention below.

(5) Postponement of the hearing would prejudice the administration of justice, in that a new date would have to be found and the appeal re-listed.

4. In all the circumstances we were satisfied that it was in the interests of justice to proceed with the hearing pursuant to Tribunal Rule 33.

The Facts

5. On the basis of the documentary evidence before us we make the following findings of fact.

6. In 2013 the Appellant had just turned 55 years of age and had retired from his employment. He has since started up his own family business. On retirement he started to receive a pension. His income from that pension in 2012-13 was £8,468.58 and tax of £2,613.16 had been deducted at source.

7. On 2 December 2013 the Appellant lodged his self assessment return for 2012-13. He disclosed income from employment of £96,074. He did not complete Boxes 10 or 11 of the return which requires the amount of pension income and the tax deducted to be returned.

8. On 29 September 2014 HMRC commenced an enquiry into the Appellant's return for 2012-13, and in particular the income from employment. HMRC were by then aware that the Appellant had failed to return his pension income. The additional tax calculated as due was £1,775.64. Much of this fell due because the pension income pushed the Appellant's total income over £100,000 which meant that he would lose part of his personal allowance.

9. In a letter dated 23 December 2014 the Appellant stated and we accept the following:

(1) He had filled in self assessment returns for many years but in 2012-13 he had mistakenly not filled in the part of the form referring to pension income.

(2) This was the first year in which he had received pension income.

(3) He had already paid tax on the pension income at source and believed, mistakenly, that there was therefore no need to declare the income.

(4) He did not realise that the pension income would cause further tax to fall due.

(5) He immediately paid the tax falling due and explained his mistake.

(6) He has now started his own family business. He has been a taxpayer for 40 years and never had such a problem before. He has always paid his tax on time.

(7) He is now paying for an accountant to make sure that future returns are correctly filled in.

10. In his grounds of appeal the Appellant repeats some of that information, but also adds the following, which we also accept:

(1) Most of the Appellant's savings had been put into the Safety Maintenance Company from which he draws only the minimum wage. The business has paid significant amounts of corporation tax and VAT over the last 3 years. It employs several people who all pay tax.

(2) He cares for his elderly mother with no help.

Decision

11. In all the circumstances the Appellant considers that the penalty, on top of the tax, is unjust and harsh. He considers that a fair penalty would be £25.

12. Our jurisdiction in relation to this appeal is set out in *Schedule 24 Finance Act 2007*. There is no doubt that the return contained an inaccuracy. We must firstly consider whether the inaccuracy was careless on the part of the Appellant.

13. The Appellant accepts that he made a mistake, but not every mistake will amount to carelessness. It all depends on the context. The return itself clearly requires pension income to be provided in Box 10 and the tax deducted at source to be provided in Box 11. It should have been clear to the Appellant from simply reading

the return that he had to provide details from his pension. Furthermore, it is clear from the Notes issued by HMRC "How to fill in your tax return" that this information is required for all pensions.

14. In our view it was simply a matter a reading the return carefully. The Appellant plainly failed to do that. We are satisfied that this amounts to carelessness on the part of the Appellant. He failed to take reasonable care in completing the return.

15. We next consider the quantum of the penalty. The Appellant has raised no specific arguments in relation to quantum but we have considered whether the amount of the penalty has been calculated in a way consistent with Schedule 24. We are satisfied that the amount of the penalty has been correctly calculated. It is 15% of the potential lost revenue. That is the minimum penalty permitted by Schedule 24 for a careless inaccuracy where the taxpayer has made a prompted disclosure. The reduction for disclosure relates to telling HMRC about the inaccuracy, helping HMRC quantify the inaccuracy and allowing HMRC access to records to quantify the inaccuracy. The maximum reduction for disclosure has been given in arriving at a penalty of 15%.

16. We have no jurisdiction to make any further reduction in the amount of the penalty save where there are special circumstances. HMRC have considered whether there are special circumstances and concluded that there are none. If we considered that such a conclusion was flawed in that it failed to take into account relevant factors, took into account irrelevant factors, was wrong in law or was unreasonable then we would have jurisdiction to reduce the penalty ourselves.

17. We are not satisfied that there are any special circumstances in the present case, or that HMRC's decision on special circumstances was flawed in any way.

18. HMRC also considered whether to suspend the penalty. They decided not to suspend the penalty because the carelessness was a "one-off". They concluded that no condition could be put in place which would help the Appellant avoid becoming liable to further penalties for careless inaccuracy. Again, if we considered that conclusion was flawed then we could order HMRC to suspend the penalty.

19. In considering HMRC's decision not to suspend the penalty we bear in mind the following principles derived from previous tribunal decisions:

(1) The evident purpose of the suspension provisions is to educate traders who have acted carelessly to help prevent repetition. This applies in particular to areas which an honest trader has found confusing and difficult to deal with in the past (see *Shelfside Holdings Ltd v Commissioners for HM Revenue & Customs [2012] UKFTT 290 (TC)*).

(2) If the only conditions which could be imposed would be unlikely to have the desired effect then HMRC cannot suspend the penalty (see *Fane v Commissioners for HM Revenue & Customs [2011] UKFTT 210 (TC)*).

(3) In normal circumstances penalties for "one-off" inaccuracies should not be suspended because in the ordinary course a condition would not help the taxpayer to avoid becoming liable to further penalties (see *Fane v Commissioners for HM Revenue & Customs [2011] UKFTT 210 (TC)* and *Durrant v Commissioners for HM Revenue & Customs [2014] UKFTT 513 (TC)*).

(4) The conditions for suspension must be more than an obligation to avoid making further returns containing careless inaccuracies (see *Fane v Commissioners for HM Revenue & Customs [2011] UKFTT 210 (TC)*).

20. We are not satisfied that the decision of HMRC in relation to suspension in the present appeal was flawed. It was an isolated error, caused by the Appellant not carefully reading the return or the Notes describing how to fill in the return. In the circumstances it was reasonable for HMRC to conclude that there were no conditions that would help the Appellant avoid future penalties and that it was not appropriate to suspend the penalty.

Conclusion

21. In all the circumstances and for the reasons given above we affirm the penalty and the amount of the penalty. We dismiss the appeal.

22. 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.

JONATHAN CANNAN
TRIBUNAL JUDGE

RELEASE DATE: 31 JULY 2015