[2018] UKFTT 118 (TC)

TC06375

Appeal number: TC/2017/04365

INCOME TAX – permission to give late notice of appeal provided that notice is given within 21 days of the date of issue of this decision – reasonable excuse on the part of the Appellant for the late notice – and, if that conclusion is subsequently held to be incorrect, the exercise of discretion to allow late notice to be given

FIRST-TIER TRIBUNAL
TAX CHAMBER

MIHAELA MIRON **Appellant**

- and -

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

TRIBUNAL: JUDGE TONY BEARE

Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1R 4QU on 27 February 2018

Mr N Ali and Mr A Yar, of Super Financial Limited, for the Appellant

Ms G Clissold, officer of HM Revenue and Customs, for the Respondents

DECISION

1. This is an application by the Appellant for permission to make a late appeal to the Respondents against an assessment to income tax dated 18 October 2016 in the amount of £408.40.

2. Section 31A of the Taxes Management Act 1970 (the "TMA 1970") provides that an appeal against an assessment made by the Respondents must be made within 30 days of the date on which the assessment was issued. Section 49 of the TMA 1970 provides that notice may be given after that date if the Respondents agree or if (where the Respondents do not agree) the tribunal gives permission. Finally, Section 118(2) of the TMA 1970 provides that, where a person has a reasonable excuse for not doing anything required to be done, he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse ceased.

3. The relevant facts in this case are as follows:

(a) In her original return in respect of the tax year of assessment ending 5 April 2013, the Appellant, advised by her former accountants, wrongly recorded the amount of her employment income;

(b) On 9 August 2016, the Respondents wrote to the Appellant to say that they had discovered a discrepancy in her original return and would be conducting a check of the employment income in her return. In that letter, the Respondents indicated that, based on the information which they had to hand, there would be additional tax payable by the Appellant in respect of the tax year in question of £408.40;

(c) Immediately after receiving that letter from the Respondents, the Appellant appointed a new accountant, Super Financial Limited ("SFL"), to advise her on resolving the issue;

(d) On the basis of the information provided to them by the Appellant, SFL prepared a revised return for the relevant tax year and this was sent to the Respondents on 15 September 2016. This return suggested that, contrary to the assertion made by the Respondents in their letter of 9 August 2016, a small overpayment of tax had in fact been made by the Appellant in respect of the relevant tax year. Unfortunately, an error was made by the Appellant and SFL in preparing and submitting the revised return because the return was not signed by the Appellant;

(e) On 18 October 2016, the Respondents sent the assessment which is the subject of the present application to the Appellant, with a copy to SFL. The assessment stated that there was an additional amount of tax of £408.40 that was due in respect of the relevant tax year and that, if the Appellant wished to appeal against the assessment, she would need to do so within 30 days of its issue;

(f) Following its receipt of the assessment, on 24 October 2016, SFL called the Respondents to see whether they had received the revised return that had been despatched on 15 September 2016. The officer of the Respondents to whom SFL spoke at that time confirmed that the revised return had been received but was waiting to be assigned and had not been dealt with. This conversation is recorded in the Respondents' own records;

(g) On 13 November 2016, the Respondents sent the return back to SFL on the basis that the return was unsigned;

(h) Following its receipt of the unsigned return, SFL prepared a further return on the same basis but, this time, arranged for the Appellant to sign the return. SFL then submitted the signed return to the Respondents on 6 December 2016;

(i) From the Respondents' own records, it appears that there were further calls between SFL and the Respondents on 9 February 2017, 10 February 2017, 22 February 2017 and 8 March 2017 in relation to the status of the revised return and that, in those calls, the Respondents were engaging with SFL in relation to the revised return and taking steps to explain to SFL how to obtain the repayment of tax that was shown as being due in the revised return;

(j) On 17 February 2017, the Appellant wrote to the Respondents purporting to appeal against a penalty for failing to file her return in respect of the relevant tax year on time;

(k) On 8 March 2017, SFL sent a letter to the Respondents which set out the details of the Appellant's income in respect of the relevant tax year and pointed out the discrepancy between SFL's view of the Appellant's tax position in respect of the relevant tax year – the fact that the Appellant was due a refund of tax – and the assessment made by the Respondents on 18 October 2016; and

(l) Finally, on 10 April 2017, the Respondents wrote to the Appellant in response to her letter of 17 February 2017, correctly pointing out that no penalty for failing to file a return in respect of the relevant tax year had been imposed on the Appellant (because the Appellant had filed her return before the filing deadline of 31 January 2014) but going on to say that there was an outstanding assessment in respect of the relevant tax year dated 18 October 2016 and that the 30-day limit to appeal against that tax assessment had now expired so that an appeal against that assessment could be made only if the Appellant had a reasonable excuse for her failure to do so.

4. What is very clear from the above description of the relevant events is that there has been a terrible muddle in relation to the tax affairs of the Appellant in respect of the relevant tax year and that, for a considerable period of time, the parties were at cross purposes. The Appellant's adviser, SFL, was trying to submit, and progress, a revised return in respect of the relevant tax year, showing that a repayment was due, and the Respondents, in engaging with that process, appear not to have noticed that there was an outstanding assessment in respect of that tax year which was completely

at odds with there being a repayment (or indeed, for some time, the fact that the deadline for filing an amended return in respect of the relevant tax year had passed).

5. At the hearing, Mr Ali and Mr Yar of SFL explained that they had not submitted a formal appeal against the relevant assessment because they expected the Respondents to infer from the fact that a revised return which was inconsistent with that assessment had been filed on behalf of the Appellant that the Appellant was challenging the assessment. In other words, the assessment was so completely at odds with the revised return which they had submitted that they expected the Respondents to deduce that they were effectively appealing against the assessment, by implication.

6. In response, Ms Clissold pointed out that the Respondents are a large organisation and that it could not necessarily be assumed that matters known to one officer of the Respondents were also known to others. She also pointed out that it would have been a simple step for SFL to submit a formal appeal against the relevant assessment in addition to progressing with the Respondents the revised return which SFL had submitted.

7. There is some force in both parties' views.

8. SFL clearly should have followed the instructions which were set out in the assessment and lodged a formal appeal against the assessment within the 30-day time limit. That would have been a simple step to take. Moreover, as the deadline for filing an amended return in respect of the relevant tax year had expired, SFL's decision to file an amended return in respect of the relevant tax year is puzzling.

9. On the other hand, I do not think that the Respondents can rely on the fact that they are a large organisation to justify a situation where one hand does not know what the other hand is doing. The whole purpose of maintaining a file in relation to a taxpayer, as the Respondents have clearly done in this case, is to ensure that knowledge is disseminated across the organisation and is not left in separate silos. So, without excusing the failings of SFL in declining to take the simple administrative step of notifying the appeal to the Respondents within the 30-day time limit and instead filing an amended return after the deadline for doing so had expired, I do think that it was incumbent on the Respondents to have become aware, sooner than they did, that the Appellant was objecting to the assessment in question.

10. As noted above, the Appellant can succeed in this appeal if she has a reasonable excuse for her failure to give notice of her appeal against the relevant assessment on time or if I think it is appropriate to exercise my discretion to allow her to do so.

11. After considering all of the above information, my conclusion is that, as long as the Appellant gives formal notice of her appeal against the relevant assessment within 21 days of the date of issue of this decision, her appeal should be upheld on the first of the above grounds and, if that is subsequently held to be incorrect, on the second of the above grounds.

12. Turning first to consider reasonable excuse, I believe that the Appellant acted perfectly reasonably in relying on SFL to sort out the problem which had been created for her by her previous advisers. She could reasonably have expected that a

professional accountancy firm would be able to follow the simple instruction set out in the notice of assessment and make the appeal within the 30-day time limit. Although it is not expressly stated in Section 118(2) of the TMA 1970 itself, other reasonable excuse provisions in the tax legislation provide that, where a taxpayer has relied on any other person to do anything, that is not a reasonable excuse unless the relevant taxpayer took reasonable care to avoid the failure. I believe that, in this case, the Appellant has taken that reasonable care. She has not simply relied on SFL to sort out her problem but has maintained a keen interest in the proceedings and has tried to avoid the current situation. But she did not herself have the necessary expertise to know what steps needed to be taken to resolve the problem and was entitled to expect that SFL would know what it was doing.

13. But, if I am subsequently held to be wrong in reaching that conclusion, and the Appellant did not have a reasonable excuse for her failure to give notice of appeal on time, I think that there is enough in the above facts to justify the exercise, in favour of the Appellant, of my discretion to allow notice of the late appeal to be given, provided that that notice is given to the Respondents within 21 days of the date of issue of this decision. My reasons for exercising my discretion in that way are that, whatever the failings of the Appellant and SFL in dealing with the Appellant's tax position in respect of the relevant tax year, it is clear that they were trying, albeit incompetently, to resolve the tax position in respect of the relevant tax year as expeditiously as possible at the same time as the assessment was in place and that it should have been apparent to the Respondents at a much earlier date than 10 April 2017 that the Appellant was objecting to the assessment. So some degree of blame for the failure on the part of the Respondents to realise that the Appellant wished to appeal against the relevant assessment can be laid at the Respondents' door.

14. For the above reasons, I hereby allow the Appellant's application for late notice of her appeal against the assessment of 18 October 2016 to be given, provided that that notice is given formally to the Respondents within 21 days of the issue of this decision.

15. 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.

TONY BEARE
TRIBUNAL JUDGE

RELEASE DATE: 7 MARCH 2018