

[2020] UKFTT 504 (TC)



TC07974

Appeal number: TC/2018/04931

CORPORATION TAX – penalties – whether reasonable excuse – no

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LEISURE PARKS REAL ESTATE LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE ANNE FAIRPO
MR JOHN WOODMAN**

Sitting in public at London on 11 June 2019

Patrick Cannon, Counsel for the Appellant

Ms Patel, litigator for the Respondents

DECISION

Introduction

1. This is an appeal against penalties for late filing of the appellant's corporation tax return for the accounting period ended 31 March 2016. The penalties totalled £28,233.26.

Appellant's case

2. The appellant accepted that a penalty was due in principle, as the return was agreed to have been filed over 18 months late. The appellant also agreed that the penalty had been correctly calculated.

3. The appellant's grounds of appeal, in their notice of appeal, were that they had a reasonable excuse for the late filing in that they were unable to confirm certain transactions with a company with which they had a significant trading relationship as HMRC had seized the records of that other company. Although accounts were able to be prepared some time before the return was filed, the rules for preparation of tax computations are substantially different to those for company accounts.

4. At the hearing, Counsel for the appellant confirmed that they were no longer pursuing these grounds of appeal as such.

5. The appellant's grounds of appeal, as set out in the hearing, were that they must be regarded as having a reasonable excuse for the delay in filing because a sister company in identical circumstances had received a similar penalty which was subsequently reduced to nil by HMRC.

6. It was submitted that HMRC are required to use their powers reasonably in the administration of penalties and that they can be taken not to have acted unreasonably in reducing the penalty of that sister company to nil. It followed, therefore, that the sister company must have had a reasonable excuse for the late filing in order for HMRC to have reduced their penalty to nil.

7. It was accepted that the appellant is required to have a reasonable excuse on their own facts but, as these facts were identical to those of the sister company, it follows that the appellant must also have a reasonable excuse for their late filing. The appellant submitted that this was a matter which was within the jurisdiction of the Tribunal to decide as the submission was that the appellant must have a reasonable excuse because its sister company must have had a reasonable excuse, and not that HMRC had acted unreasonably as between the appellant and its sister company.

8. It was also submitted that the Time to Pay arrangement granted by HMRC was evidence that the appellant had a reasonable excuse as the arrangement must have been granted for a reason.

HMRC's case

9. HMRC submitted that each case and appeal must be considered on its own merits and that the submissions made by the appeal were not within the jurisdiction of the Tribunal as a question as to whether HMRC acted rationally as between two taxpayers was a matter for judicial review.

10. HMRC also submitted that the original grounds of appeal did not demonstrate a reasonable excuse, as a taxpayer is required to keep their own records (s386 Companies Act 2006). Failure to keep such records cannot provide a reasonable excuse for late filing of a return. The appellant had also managed to file their accounts at Companies House several months before they filed their tax return and, as such, should have been able to submit their return at the same time.

11. HMRC also submitted that there was no reasonable excuse for the appellant's failure to pay corporation tax on time as they have been granted a Time to Pay arrangement but had still failed to make payment on time.

Discussion

12. There was no dispute that the appellant's return was filed late and that corporation tax was paid late. There was also no dispute that the penalties had been correctly calculated.

13. The only question for this tribunal was whether the appellant had a reasonable excuse for the default.

14. The appellant's case is that they must have a reasonable excuse because a sister company in the same circumstances had a penalty reduced to nil and, as HRMC must exercise their powers reasonably, that company must have had a reasonable excuse.

15. We note that the appellant was not arguing that HMRC had acted unreasonably, which they agreed would be a matter for judicial review, but instead that logic dictated that they must have a reasonable excuse because the same circumstances had amounted to a reasonable excuse for the sister company.

16. This argument is unfortunately not sustainable: a quick review of cases in this Tribunal and the higher courts will make it clear that HMRC are entirely capable of making mistakes.

17. The fact that the penalty incurred by a sister company in essentially the same circumstances was reduced to nil cannot, therefore, be regarded as evidence that such sister company had a reasonable excuse and therefore cannot be regarded as evidence that the appellant itself has a reasonable excuse.

18. Counsel noted that the appellant was no longer relying on their original grounds of appeal but, for the avoidance of doubt, we consider that those grounds also do not amount to a reasonable excuse. If the appellant could not complete its tax return without access to the records of another company, it follows that the appellant had failed to keep its own records as required by law. Following *HMRC v Perrin* [2018] UT 0156 (TCC) and considering all of the circumstances, the appellant's failure to keep proper records cannot amount to a reasonable excuse for late filing of a corporation tax return and late payment of tax.

Decision

19. The appellant's appeal is dismissed.

20. 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.

ANNE FAIRPO

TRIBUNAL JUDGE

RELEASE DATE: 15 DECEMBER 2020