Sepakat-Star ICT Trading & Services

AND

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No. 38 of 2017)

Hon. Gareth John Lugar-Mawson, J.C.
18th February, 2019.

Income Tax Act (Cap. 35), section 78(1), meaning of 'reasonable excuse'.

Lt. Col. (R) Hj Harif Bin Ibrahim (M/S Lt. Col. (Rtd) Harif Ibrahim) for Appellant.
DPP Amiriah Bte Hj Awang Ali and DPP Farhanah Bte Pehin Dato Hj Suhaili for Respondent.

Case cited in the Judgment:

The Clean Car Company v Customs & Excise Commissioners [1991] VATTR 234

J U D G M E N T

Mawson, J.C.:

1. This appeal concerns the meaning of the phrase *'reasonable excuse'* in Section 78(1)(a) of the Income Tax Act (Cap. 35).

2. The Appellant, a limited company, faced 5 charges under section 78(1)(a) for failing to comply with Section 52 of the Act, in that it failed to furnish a return of income for the years ended 31 December 2013 (1st charge); 31 December 2012 (2nd charge); 31 December 2011 (3rd charge); 31 December 2010 (4th charge); and 31 December 2009 (5th charge).

3. The Appellant pleaded not guilty to all charges. The Magistrate found it guilty on the 1st and 2nd charges and acquitted it on the 3rd, 4th and 5th charges. It was ordered to pay a fine of $2,000 on each of the 1st and 2nd charges (a total of $4,000), which it duly paid.

4. The Appellant appeals against conviction on the grounds that the Magistrate erred in law in deciding that it had no reasonable excuse for failing to submit its tax returns within the time specified by the Collector for the years 2012 and 2013.

5. Section 52 of the Act sets out the duty cast upon the Appellant, it provides:

"52. (1) Every company is required to furnish a return of income for a year of assessment by 30th June of the relevant year of assessment to which the return relates.

(1A) A return of income shall –

(a) be in the prescribed form and accompanied by such annexures, statements or documents as may be prescribed; and

(b) fully state all the relevant particulars or information as specified in the form of return, including a declaration of the records kept by the company.

(1B) The Collector may, if he considers it necessary, extend the time to file the return of income.

(2) The Collector may, exempt from liability to furnish returns such class of persons not liable to pay tax as he thinks fit, and any person so exempted need not furnish a return under that subsection unless he is required by the Collector to do so under subsection (3).

(3) Notwithstanding subsection (1), the Collector may, by notice in writing, require any person to furnish to him in such form and manner and within such reasonable time as he may determine, with a return of income and such particulars as may be required for the purpose of ascertaining the income, if any, for which such person is chargeable under this Act."

6. Section 78(1)(a) creates the offence, it provides:

"78. (1) Every person who without reasonable excuse –

(a) fails to comply with the requirements of a notice given to him under any of the following sections or subsections - section 52, 54, 55, 55A, 55B, 57(1), 57(2), 58, 59, 60(1), 60(2) or 65(3); ……

Shall be guilty of an offence."

7. The prosecution case was that, prior to February 2015, the Appellant had been given 8 reminders to submit the tax return for the years in question, none had been complied with. On 5 February 2015, final notices giving it 30 days to comply, were served on the Appellant at its registered address.

8. On 5 March 2015 the Appellant requested an extension of time to furnish the returns on the grounds that the current management had only taken over the company in 2009; that the previous management had no audited accounts, which had delayed the completion of the system records; and that a new audit firm had taken over the management of their accounts. It was also said that a fire had broken

out at the Appellant's premise on 30 April 2011 resulting in a partial destruction of its records.

9. In reply, the Revenue Division granted the Appellant an extension to 3 April 2015 to furnish the returns.

10. It would appear from the minutes of a meeting held on 24 April 2018 between the Appellant's representatives and Ernst & Young, a firm of auditors, produced in evidence, that the Appellant's accounts for the years 2009 to 2013 have still not been prepared and audited, and that the requirement to furnish the tax returns for the years in question remains unfulfilled.

11. It is argued for the Appellant that it would have been impossible for it to submit the tax returns for the two years in question, as its audited statement of accounts for those years have not been completed. The minutes of the 24 April 2018 meeting between the Appellant's representatives and Ernst & Young speaks of the difficulty of preparing and auditing the accounts, stating that although it's possible to do so, it will be a difficult task and take a long time. It is submitted that this amounts to a reasonable excuse for failing to furnish the returns for 2012 and 2013.

12. There is no statutory definition of the phrase *'reasonable excuse'* in relation to the late submission of tax returns, neither does there appear to any case authority on the meaning within that context. In the United Kingdom, the First-tier Tribunal (Tax), as well as other tribunals charged with enforcing revenue law, have followed the following test, first set out in ***The Clean Car Company v Customs & Excise Commissioners*** **[1991] VATTR 234**, in deciding whether or not a tax-payer has a reasonable excuse for failing to comply with a provisions relating to the timely filing of tax documents and/or the payment of tax liabilities:

> *"…the test of whether or not there is a reasonable excuse is an objective one. One must ask oneself: was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time , a reasonable thing to do?"*

13. At trial, the Magistrate was referred to a number of UK Tax Tribunal cases applying that test. She summed up the matter as follows:

> *"The wide variety of circumstances and decisions makes it difficult to draw any firm conclusion about what is likely to be accepted as a reasonable excuse. Each case must be considered on its merits. Accordingly, it is my view that it is a matter of common sense. Generally speaking a reasonable excuse is something that stopped a registered company from submitting the return of income tax on time due to circumstances outside their control or a*

combination of event. Additionally, the failure must not simply be a deliberate act of non-compliance."

14. That appears to me to be fair summation of the matter. Applying it, she found that the partial destruction of the Appellant's records in the April 2011 fire afforded it a reasonable excuse for failing to comply with the requirement to furnish the tax returns for 2009, 2010 and 2011 (the years before the fire) in a timely manner, but that it afforded it no reasonable excuse for failing to comply with the requirement to furnish the post fire returns for 2012 and 2013.

15. I cannot fault that finding. It is unreasonable for the Appellant - who I take it is a responsible trader, conscious of and intending to comply with its obligations regarding tax, and which has the experience and other relevant attributes of a taxpayer, even though it was placed in the situation of experiencing the partial destruction of its records in 2011 - to so neglect its financial affairs and statutory duties that by April 2018, nearly 7 and 6 years respectively after the years in question, when it sought Ernst & Young's assistance, it had failed to prepare and have audited its accounts for 2011 and 2012, and thus place itself in the position of being unable to comply with its duties under the Income Tax in relation to those years. There clearly is no reasonable excuse for those failures.

16. The appeal against conviction is dismissed with costs to the Respondent.

HON. GARETH JOHN LUGAR-MAWSON
Judicial Commissioner