



TC04225

Appeal number: TC/2013/07362

INCOME TAX – loss relief – section 66 Income Tax Act 2007 – whether trades carried on on a commercial basis – whether trades carried on with a view to the realisation of profits – no – appeal allowed by consent in relation to two tax years where assessments were out of time – otherwise appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

DIPAK PATEL

Appellant

- and -

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

**TRIBUNAL: JUDGE JONATHAN CANNAN
MR LESLIE BROWN**

Sitting in public in Manchester on 4 September 2014

**Mr Stephen Outhwaite of Independent Tax and Forensic Services LLP appeared
for the Appellant**

Mrs Nadine Newham of HM Revenue & Customs appeared for the Respondents

DECISION

Background

5 1. Mr Dipak Patel is a psychiatric social worker who has been employed full time
for many years by Bradford Metropolitan District Council. In 2004 he started a trade
known as “Silver Spice” supplying ingredients and running cookery workshops. In
2007 he started a separate trade known as “Art Sutra” which sold art and photographic
10 images of Indian culture. He conducted both these trades as a sole trader alongside his
full time employment.

2. The issue on this appeal is whether Mr Patel is entitled to set off losses in either
of the trades against his employment income in tax years 2006-07 to 2009-10. The
loss relief has been claimed under *section 380 Income and Corporation Taxes Act*
15 *1988 (“ICTA 1988”)* for 2006-07 and under *section 64 Income Tax Act 2007 (“ITA*
2007”) for the later tax years.

3. The respondents contend that Mr Patel is not entitled to loss relief because the
trades were either:

- (1) not carried on on a commercial basis, or
- (2) not carried on with a view to the realisation of profits.

20 4. On 14 March 2011 the respondents opened an enquiry into Mr Patel’s self
assessment tax return for 2009-10. On the closure of that enquiry they amended the
self assessment return so as to refuse loss relief. They also made discovery
assessments for 2004-05 to 2008-09. The respondents accept that the assessments for
2004-05 and 2005-06 were out of time. By consent we were invited to allow the
25 appeals for those tax years and we formally do so. The remaining sums in dispute on
the appeal are as follows:

Tax Year	Tax Assessed £
2006-07	3,319
2007-08	4,529
2008-09	4,203
2009-10	4,689

5. We set out below the legal framework in relation to what is known as sideways
30 loss relief for trade losses against general income.

Relief for Losses against General Income

6. Section 64 ITA 2007 provides for a taxpayer to claim loss relief against general income if the person:

“(a) carries on a trade in a tax year, and

5 (b) makes a loss in the trade in the tax year ...”

7. This section is to be read with section 66 which restricts the relief as follows:

“(1) Trade loss relief against general income for a loss made in a trade in a tax year is not available unless the trade is commercial.

10 (2) The trade is commercial if it is carried on throughout the basis period for the tax year—

(a) on a commercial basis, and

(b) with a view to the realisation of profits of the trade.

15 (3) If at any time a trade is carried on so as to afford a reasonable expectation of profit, it is treated as carried on at that time with a view to the realisation of profits.

(4) ...

(5) If there is a change in the basis period in the way in which the trade is carried on, the trade is treated as carried on throughout the basis period in the way in which it is carried on by the end of the basis period.”

20 8. These provisions replaced previous provisions in sections 380 and 384 ICTA 1988. Both parties accepted that the requirements for loss relief in ITA 2007 and ICTA 1988 were identical for present purposes.

25 9. In *Wannell v Rothwell [1996] STC 450* Robert Walker J as he then was considered the meaning of the term “commercial basis” in the context of a loss relief claim. At 461b-d he stated as follows:

30 “...the best guide is to view “commercial” as the antithesis of “uncommercial”... A trade may be conducted in an uncommercial way either because the terms of trade are uncommercial (for instance, the hobby market-gardening enterprise where the prices of fruit and vegetables do not realistically reflect the overheads and variable costs of the enterprise) or because the way in which the trade is conducted is uncommercial in other respects (for instance, the hobby art gallery or antique shop where the opening hours are unpredictable and depend simply on the owner’s convenience). The distinction is between the serious trader who, whatever his shortcomings in

skill, experience or capital, is seriously interested in profit, and the amateur or dilettante.”

10. It is clear and both parties accepted that section 66(2) ITA 2007 and its predecessors set out two separate conditions which must be satisfied if a trade is to be commercial.

11. The first condition is that the trade must be carried on on a commercial basis. The second condition is that the trade must be carried on with a view to the realisation of profits. Whilst these amount to separate conditions it seems to us that the question of profit is relevant to both conditions as appears from the judgment of Robert Walker J. In particular whether a trade is carried on on a commercial basis may depend in part on whether the trader is “seriously interested in profit”.

12. We were referred to the decision of the First-tier Tribunal (Judge Cannan and Mr Ratcliffe) in *Kitching v Commissioners for HM Revenue & Customs [2013] UKFTT 384 (TC)*. Both parties accepted the conclusion in that case (at [22] – [28]) that the question of whether a trade is being carried on with a view to the realisation of profits is a subjective test, but that where there is a reasonable expectation of profit it is not necessary to look at the taxpayer’s subjective expectations. Further, that the taxpayer’s view to the realisation of profits may be to the realisation of profits at any time in the future, but must be on the basis of the way in which the trade is being carried on in the basis period (see [29] to [33]). We refer to this aspect at [72] below.

Findings of Fact

13. We heard oral evidence from Mr Patel and he was cross-examined by Mrs Newham. We also had documentary evidence provided by Mr Patel and the respondents. We consider first the circumstances in which Mr Patel set up and operated the Silver Spice trade. We then consider the circumstances in which he set up the Art Sutra trade. The respondents accepted that both activities amounted to trades for present purposes. Based on the evidence before us we make the following findings of fact.

14. Mr Patel came to the United Kingdom from India in 1989. Since then he has been passionately interested in cooking, and in particular using authentic and ethically sourced ingredients. The general public have also become more interested in the provenance of foodstuffs and the health properties of ingredients and spices.

15. Mr Patel described how he lived his life by reference to an ancient Hindu philosophy called Ayurveda, which involves an understanding of how the mind, body and soul work together. In cookery it translates to the use of fresh foods and specific ingredients and spices with health giving properties.

16. Mr Patel wanted to spread the message of what he called “Ayurvedic cooking”. In November 2004 he started to make his own coriander marinade to an old recipe. He cooked sample batches at home and sold it to work colleagues and neighbours,

through a newsagents shop owned by his father in law and at a pub next to the newsagents. In due course he also sold products at local food festivals such as York Food Festival.

17. The response was favourable and so Mr Patel set up a facility in his garage at home where he could make larger batches. He went on a course in food hygiene and took a half day business course run by HMRC. He purchased a commercial blender and took orders from the customers mentioned above. He would take a day off work to make batches of the marinade to order. He printed labels and sold the marinade in 200 ml plastic tubs. The ingredients included coriander, lime juice, lemon juice and chilli which he bought from wholesale suppliers. Other ingredients were purchased from Morrisons and Tesco's supermarkets. The coriander marinade sold for £2.99 per tub with a cost price of less than 25p per tub according to Mr Patel.

18. At some stage Mr Patel considered the possibility of contracting out the production of coriander marinade but the cost was prohibitive.

19. Soon after starting the trade Mr Patel came across a garam masala mix of spices from Gujarat in India. He started to market the mix and it was well received, by consumers and restaurants. Mr Patel had contacts with 5 restaurants in Huddersfield and Bradford. He did not think that the traditional supermarket plastic packaging of spices was consistent with a good quality product and therefore he sold the mix in sealed foil packaging using his Silver Spice brand. He purchased and used a heavy duty heat sealing machine to pack the spices.

20. We were provided with an example of the packaging and it certainly looked professional. The example we saw did not include the weight of spice, but we understand that it was sold to consumers in 100g packs and to restaurants in 1kg packs. A separate sticker would show the weight and best before date.

21. The sale price of 1kg of garam masala was £20. The cost to Mr Patel was approximately £4 per kg. Mr Patel thought that postage worked out at £5 for 10 kg. It would be sent by parcel post from India by Mr Patel's parents. Occasionally his parents would bring some with them to the UK when they visited. Mr Patel would also bring some with him following trips to India. He made approximately 3 or 4 trips a year.

22. Mr Patel also started to supply vanilla pods in 2005. They were sourced from Southern India by Mr Patel who brought them back with him in 5kg bundles. The vanilla pods were packed in foil in the same way as the spice mix and aimed at consumers. However they were not successful and there were no sales of vanilla pods after 2005-06.

23. After about a year in the trade Mr Patel started a website at www.silverspice.com. The website was built by Infologi Pte Ltd ("Infologi") who had also designed and printed the product labels. We make further findings in relation to Infologi below.

24. Mr Patel could see that some people were struggling to incorporate the coriander marinade into their cooking and so he produced recipe cards and posted recipes on his website. He also made a video showing how to use vanilla pods which was available on the website.
- 5 25. The website contained a lot of information on different spices and how they could be used in healthy cooking. Mr Patel included links to spice organisations in the United States and Canada. He initially tried to sell the coriander marinade, garam masala and vanilla pods online. He also sold metal spice containers to be used in domestic kitchens. These were sold for £14.99 including spices. Mr Patel put in a lot
10 of hard work updating and upgrading the website. However there was no online payment facility, so the reality was that sales were made to local people and Mr Patel collected payment on delivery.
26. One page of the website headed “*About Us*” described the ethos of the business as follows: “*Our primary aim is to promote Spice education and simple, traditional
15 cooking methods by working in partnership with local Schools, Colleges and other organisations*”.
27. Mr Patel also intended to provide access via the website to videos showing 150 recipes being prepared by his mother. Mr Patel produced the videos himself but the files became corrupted and could not be used.
- 20 28. In addition to the website Mr Patel distributed leaflets door to door. He also began to provide cookery workshops for schools and local community groups. Mr Patel would cook simple recipes, and at the same time promote the ethos of Ayurvedic cooking and awareness of spices. He would take along samples and go through various spices outlining their benefits describing which spices go best with
25 which vegetables.
29. Mr Patel extended the workshops and promoted Indian cookery workshops in customers’ homes for between 6 and 8 individuals. These would last about 2 hours during which time Mr Patel would explain the Ayurvedic philosophy and traditional Indian cooking techniques. As part of the workshop he would help customers prepare and cook a meal for themselves. Customers were charged £19.99 per person which
30 included sample spices and a recipe, all ingredients, course material, a glass of wine and the meal which was prepared during the class.
30. Mr Patel produced gift vouchers for a workshop of up to 6 people which he gave free to local community groups. He did this to raise awareness of the Silver
35 Spice trade and also because he felt that he should give something back to the local community. The groups would use the vouchers as raffle prizes to raise money.
31. On 15 November 2004, at the commencement of the Silver Spice trade Mr Patel applied to be registered for VAT. On the application he estimated the value of his taxable supplies in the following 12 months at £2,000, which would all be zero rated
40 for VAT purposes. Hence he also anticipated that he would receive regular repayments of VAT.

32. In August 2005 Mr Patel applied to register a trade mark for a logo including the words “*Silver Spice*” and “*The Ultimate Ingredient for Your Culinary Delight*”. The application was accepted. Prior to registration Mr Patel received correspondence from solicitors representing British Sugar plc who are the proprietors of the well known trade mark “Silver Spoon”. They were satisfied however with an undertaking from Mr Patel that he would not compete directly with British Sugar and would take reasonable steps to avoid confusion with the trade mark Silver Spoon.

33. Mr Patel kept track of the income and expenditure of Silver Spice using an excel spreadsheet. He entered amounts of income and expenditure on a monthly basis. In each tax year however Mr Patel made a net loss. The figures are included in Annex 1 to this decision and may be summarised as follows:

Tax Year	Turnover £	Net Loss £
2004-05	295	1,675
2005-06	3,206	4,914
2006-07	858	8,998
2007-08	874	10,384
2008-09	675	10,572
2009-10	405	16,711

34. Mr Patel issued invoices for sales until 2006. Thereafter he simply kept an A4 record of sales. These would then be entered on the excel spreadsheet.

35. In 2009-10 the spreadsheet for receipts showed sales of £263 but the declared turnover was £405. The spreadsheet also showed a cash injection of £1,400. Mr Patel was unable to explain the difference in sales, and thought that there may have been an error in the cash injection.

36. Mr Patel was able to sustain the losses described above by investing the proceeds of a matured endowment policy and personal savings into the trade.

37. Mr Patel claimed that his trade wasn't a hobby. He told us that it had started as a hobby but then it became about making a profit. He enjoyed it but he also wanted to supplement his income. His plan was to reduce his hours as a social worker in order to be able to devote more time to the businesses. He wanted to be able to invest capital to put the whole business including the hosting of cookery workshops under one roof. If that happened he envisaged making a profit. We deal with this aspect of Mr Patel's evidence in our decision below.

38. Mr Patel put the decline in turnover after 2005-06 down to his time being diverted to establishing and improving the website and more time spent travelling in India. He had a full time job and could not devote more time to the business. Mr Patel preferred to do the cookery workshops and after 2005-06 he made a conscious decision to reduce production and sales of the coriander marinade. The best selling

product then became cookery workshops which would generally have 3 or 4 individuals attending.

39. Mr Patel said in evidence that he sold approximately 10 spice tins a month at £14.99. That was clearly incorrect because it would equate to sales of £1,800 per annum just from spice tins. Mr Patel then suggested that it was possibly 5 spice tins a month which was also incorrect.

40. The sales in 2008-09 were £675. Mr Patel said that this might be broken down as £400 from 5 workshops in the year and £300 from sales of 15 kg of garam masala. We find that this analysis of sales represents the position in 2008-09 and is also representative of the position in other tax years after 2005-06.

41. It seems to us and we find as a fact that Mr Patel had one relatively good year selling coriander marinade in 2005-06 and thereafter he concentrated on the website and setting up Art Sutra.

42. The losses incurred in all the tax years reflect the sums spent by Mr Patel on establishing, maintaining and upgrading the website. For example in 2009-10 the loss was £16,711 and the cost of website maintenance and development was £11,220. Mr Patel was asked why he spent so much on the website before he had actually built up a business. He thought that it would be easier for people to access his products via a website and that it would be a marketing tool.

43. In December 2010 Mr Patel apparently tried to recruit an ethnic food consultant with a view to supplying his products to Asda. He identified a person who was potentially suitable but she did not take the job. There was little evidence before us about the recruitment process and we are not satisfied that it was ever a realistic possibility that Mr Patel would employ anyone full time in the business.

44. The expenses in 2009-10 which go to make up the loss for which relief is claimed include £541 to The Royal Mint. This was a gold coin featuring an image of the Hindu deity Ganesh which Mr Patel described as “*a present for the web designer*”. It only became apparent late in Mr Patel’s evidence that his previous references to the web designer in fact were to his brother who owned Infologi. Mr Patel’s brother lives in Singapore and through Infologi employs a team of 4 staff in India.

45. In March 2007 Mr Patel set up Art Sutra. This was a trade in which he sold photographic images of Indian culture together with some artistic images of Indian origin. Some of the images were of ingredients such as spices on display at food markets in India Others were of cultural or religious interest. The photographs were taken by Mr Patel on his trips to India and then edited by Infologi before being uploaded onto a website. The address of this website was not in evidence before us but we infer it was a separate website to Silver Spice.

46. Mr Patel’s initial idea was to sell downloads of images for £4.99. When the website was first set up there was difficulty with the online payment facility. Eventually Mr Patel managed to sell a few images, maybe 50. He also received requests for free downloads from local organisations such as temples.

47. The expenditure incurred by Mr Patel on Art Sutra comprised his travelling expenses to India, website design and computer memory to store images. Mr Patel marketed the trade by taking sample images on canvas to local art galleries for display. He also produced an album showing the images.

5 48. In addition to photographic images, Mr Patel identified an artist in India and obtained the rights to produce digital images of his work in return for a royalty. He sold one digital image to an art gallery for £24.99.

49. Mr Patel kept track of the income and expenditure of Art Sutra using an excel spreadsheet. He entered amounts of income and expenditure on a monthly basis. In
10 each tax year however Mr Patel made a net loss. The figures are included in Annex 1 to this decision and may be summarised as follows:

Tax Year	Turnover £	Net Loss £
2006-07	nil	6,089
2007-08	151	10,205
2008-09	125	10,445
2009-10	77	12,178

15 50. As with Silver Spice, the losses principally reflect sums spent on establishing, maintaining and upgrading the website. If Art Sutra did ever make a profit Mr Patel said that he intended to donate them to local people in India where the photographs were taken.

20 51. Mr Patel's losses in Silver Spice and in Art Sutra over the periods set out above were some £85,000. These were funded by an endowment payout which Mr Patel received and his income from employment. He maintained that his intention was to make a profit. He had been planning to reduce his hours as a social worker to 4 days a week in order to put more effort into the businesses. He hoped to make a profit from the trades so that he could move out of social work. He also hoped that someone
25 might want to purchase the websites but that did not materialise. Whether or not anyone might buy the website and what they might pay for them appeared to us to be entirely speculative.

52. In 2009-10 Mr Patel took a course at Bradford University which was required for his employment as a social worker. As a result he took 6 months away from the businesses.

30 53. In June 2011, shortly after the respondents enquiry commenced, Mr Patel ceased both trades. He said in evidence that when HMRC told him that they did not consider the businesses to be commercial he decided there was no point in carrying on.

54. In the course of the enquiry Mr Patel gave reasons for the failure of the businesses. This included his lack of time to commit to the businesses. In relation to Silver Spice he pointed to the state of the economy and a lack of interest from consumers in home cooking. In relation to Art Sutra he pointed to lack of demand for images, the principal interest of consumers was free downloads.

Decision

55. Mr Outhwaite who appeared for Mr Patel submitted that Mr Patel was not carrying on the trades as an amateur or dilettante. His only motivation was to make money through realising profits. In each year he was trying to make a profit to supplement his income. He submitted that we must consider the position from Mr Patel's perspective in each tax year under consideration. We should not use the benefit of hindsight. The issue was whether Mr Patel was carrying on the trades with a view to the realisation of profits. There was no other explanation for the time and effort he spent on building the businesses. What he did in registering for VAT and protecting his trade mark goes beyond a hobby. The fact that losses were incurred in each year was not determinative. Whatever lack of business acumen Mr Patel may have had, he was still carrying on the trades on a commercial basis with a view to profit.

56. Mrs Newham who appeared for the respondents submitted that Mr Patel never had any realistic prospect of making a profit from either trade and must have known that fact. The trades were not run on a commercial basis because Mr Patel could not have been seriously interested in profit.

57. We must first consider whether each of the trades was carried on on a commercial basis. In the light of our findings of fact as a whole we do not consider that either of the trades was carried on on a commercial basis. In our view the income likely to be generated by the trades was never going to be sufficient to cover the overheads being incurred, in particular the costs of developing and maintaining the websites.

58. We do not consider that Mr Patel approached the trades in a commercial way. He accepted that they started off as a hobby. In our view the trades never got beyond being a hobby.

59. It is fair to say that certain factors do indicate a commercial approach, including:

(1) Mr Patel went about producing professional looking products which in the case of his coriander marinade produced a healthy gross margin.

(2) Mr Patel took steps to protect his trade mark Silver Spice.

(3) Mr Patel set up professionally designed websites.

60. In Silver Spice, whilst the coriander marinade was modestly successful, it is clear that Mr Patel was more interested in presenting cookery workshops. That was

what he enjoyed most. It must have been apparent to him that there was very little market for his workshops. He held approximately 5 workshops a year, with 3 to 4 people attending each workshop. The workshops generated an annual income of approximately £400. There is no evidence that Mr Patel took any commercial decision to address the lack of income. Indeed he seems to have put aside the most profitable product, which was the coriander marinade.

61. We are not satisfied that Mr Patel's motivation was the pursuit of profit. In the light of our findings of fact we infer that his motivation in setting up Silver Spice and continuing the trade was to pass on his knowledge of Ayurveda and his enthusiasm for cookery and spices. The steps he took in setting up and carrying on the trade were with a view to sharing his knowledge and enthusiasm. Not only did the trade give him that opportunity, but it also gave him the opportunity to involve his family. In particular his mother in cookery demonstrations and his brother in web design and maintenance.

62. It is notable that Mr Patel did not seem to have any real idea as to the level of sales he was generating for spice tins. He suggested it was 10 tins a month and then corrected himself to 5 tins a month. Clearly it was nothing of the sort. We put this confusion down to the fact that Mr Patel was not really concerned about the level of sales. He simply wanted to pursue his interests. The trade was there not because he was seriously interested in profit but to provide a context in which to pursue his interests.

63. Similarly, in Art Sutra, we consider that Mr Patel's motivation was to provide a platform for him to share his enthusiasm for photography and Indian culture. He was not seriously interested in profit.

64. We accept Mr Outhwaite's submission that we are concerned with the position in each tax year and we should guard against the use of hindsight. However the way in which Mr Patel conducted the business in later years does shed light on his motivations throughout the periods of trading.

65. If Mr Patel had been seriously interested in profit he would have closed both the trades down before 2011. Alternatively he would have made fundamental changes to both trades in order to give some prospect of profit. Further, he would not simply have closed the businesses down when HMRC commenced its enquiries into loss relief claims.

66. The distinction which Robert Walker J identified in *Wannell v Rothwell* was between a serious trader who, whatever his shortcomings in skill, experience or capital, is seriously interested in profit and the amateur or dilettante.

67. Even making due allowances for Mr Patel's accepted shortcomings in running the trades, we do not consider that he was seriously interested in profit. Any interest in profit, whether through trading or on a sale of the websites, was superficial. Mr Patel might well have dreamt that the trades could become successful but he was unable to devote sufficient time and resources to making them successful. He must

have realised that the prospect of the trades becoming profitable was remote and that there would have to be significant changes to the way in which he conducted the trades to even give a chance of profitability.

5 68. In the light of all the evidence we do not consider that either trade was carried on on a commercial basis.

69. We must also consider whether Mr Patel carried on the trades with a view to the realisation of profits. We indicated above that the question of profitability was relevant to both conditions set out in the legislation. A person who is not seriously interested in profit will not be carrying on a trade on a commercial basis. The second
10 condition is concerned with whether the trades were carried on with a view to the realisation of profit.

70. A trade might be carried on with a view to achieving personal satisfaction and enjoyment regardless of profit. Alternatively it might be carried on solely with a view to profit and for no other reason. There may also be a combination of reasons why a
15 trade is carried on, involving both personal satisfaction and the realisation of profit.

71. Mr Outhwaite did not suggest that there was a reasonable expectation of profit in any of the tax years in question. Mr Patel cannot therefore rely on the deeming provision in section 64(3) ITA 2007 or its predecessor in section 384(9) ICTA 1988.

72. The decision in *Kitching* sets out why the test in relation to this second
20 condition is subjective. At [33] of *Kitching* the tribunal stated as follows in relation to the time within which the taxpayer must have a subjective view to the realisation of profits:

25 *“... In our view the focus is on whether the taxpayer has a genuine view to the realisation of profit with the trade being carried on in the particular way in which it is actually carried on in the basis period. Section 66(5) deals with changes in the way a trade is carried on during the basis period. The result is that a taxpayer is not permitted relief where it is anticipated that at some future date the way in which the business is carried on will or may change enabling
30 profits to be generated in the future. The taxpayer cannot rely for the purposes of loss relief under section 64 on a change in the way a business is carried on after the end of the basis period. Still less where the change may or may not happen at an indeterminate time in the future.”*

35 73. Mr Patel intended to reduce the hours of his employment as a social worker in order to devote more time to Silver Spice and Art Sutra. We are satisfied that Mr Patel recognised that neither trade could possibly make a profit unless he devoted more time to the trades. It was only if he were to spend more time in the business that there would be any prospect of a profit. In those circumstances it could not be said that Mr

Patel was conducting the trades with a view to the realisation of profits. The circumstances are similar to those in Kitching.

74. We do not consider that Mr Patel could really have considered that either of the trades would make a profit. We are satisfied that they were hobby businesses. For example Mr Patel did not put his effort and energy into the one product which was popular with consumers, the coriander marinade. Instead, the cookery workshops became his priority because he enjoyed the interaction with individuals and he could educate and inform participants about Ayurvedic philosophy.

75. In both trades, Mr Patel's real motivation was not profit, but the enjoyment he got from working with people and conveying his passion for cookery and photography. That is the only reasonable explanation for the circumstances in which Mr Patel continued the trades after 2005-06. We are satisfied that Mr Patel had the same motivation throughout the period we are concerned with, including 2005-06.

76. In the light of all the evidence we are satisfied that Mr Patel was not carrying on the trades with a view to the realisation of profits.

Conclusion

77. We do not consider that in the basis periods for tax years 2006-07 to 2009-10 the requirements of section 66(2) ITA 2007 or section 384(1) ICTA 1988 were satisfied. In the circumstances Mr Patel was not entitled to loss relief for the tax years in question and we must dismiss the appeal in relation to those tax years.

78. As stated above, the respondents accept that the assessments for tax years 2004-05 and 2005-06 were out of time. We therefore allow the appeal in relation to those assessments.

79. 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.

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**JONATHAN CANNAN
TRIBUNAL JUDGE**

RELEASE DATE: 9 January 2015

ANNEX 1

Silver Spice

Year Ended 05 April	2005 £	2006 £	2007 £	2008 £	2009 £	2010 £
Turnover	295	3,206	858	874	675	405
Total Expenses	1,970	8,120	9,856	11,258	11,247	17,116
Net Loss	(1,675)	(4,914)	(8,998)	(10,384)	(10,572)	(16,711)

Art Sutra

Year Ended 05 April	2005 £	2006 £	2007 £	2008 £	2009 £	2010 £
Turnover			0	151	125	77
Total Expenses			6,089	10,356	10,570	12,255
Net Loss			(6,089)	(10,205)	(10,445)	(12,178)