REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NOKIA (PHILIPPINES), INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1585
(CTA Case No. 8679)

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, *JJ.*

Promulgated:
MAY 08 2019 2:55pm

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RESOLUTION

RINGPIS-LIBAN, J.:

Submitted for resolution is the petitioner's "Motion for Reconsideration" filed on September 25, 2018.

Petitioner seeks reconsideration of the Court *En Banc's* Decision, the dispositive portion of which reads as follows:

> "**WHEREFORE,** premises considered, the Petition for Review is hereby **DENIED for lack of merit.** Accordingly, the Decision dated August 9, 2016 and Resolution dated January 16, 2017 are hereby affirmed.
>
> **SO ORDERED.**"

In the Motion for Reconsideration, petitioner avers that the petition for review should not have been dismissed or denied for having been filed prematurely.

In the Resolution[1] dated October 29, 2018, the Court *En Banc* required respondent to file his Comment on the "Motion for Reconsideration." However, to date respondent has not filed his Comment.

After consideration, the Court *En Banc* resolves to deny the instant motion. The Court *En Banc* reviewed the grounds relied upon by petitioner in support of its Motion for Reconsideration but finds no cogent reason to grant the same. The arguments presented in the said motion were already passed upon, discussed and judiciously resolved in the assailed Decision dated August 17, 2018.

The Court *En Banc* reiterates its ruling that the Petition for Review was prematurely filed.

Petitioner maintains that its filing of judicial claim for refund which reckoned the 120-day waiting period from the filing of its administrative claim for refund, is validated by the issuance of Revenue Memorandum Circular (RMC) No. 54-2014. As previously ruled by this Court, the said argument of petitioner is erroneous because the pronouncements made in RMC No. 54-2014 applies to administrative cases filed after June 11, 2014 only. The present case was filed with the BIR on March 1, 2013.

In the Assailed Decision, the Court *En Banc* ruled that:

> "From the foregoing, it can be observed that petitioner itself repeatedly requested the granting of an additional period, within which to submit complete supporting documentary requirements, and thus acknowledging that its submission of documents was just partial. In fact, in its May 16, 2013 letter, petitioner specifically requested an extension period of until June 17, 2013, within which to submit the supporting documents.
>
> Based on Section 112(C) of the NIRC of 1997, as amended, and the above-mentioned jurisprudence, the 120-day period must be reckoned from the filing of the complete documents, or expiration of the period given. It is only upon manifestation of petitioner that it no longer wishes to submit any additional documents, that the 120-day period would begin to run.

[1] Rollo, CTA EB No. 1483, pp. 151-152.

In the instant case, considering that petitioner itself asked for an extension period of until June 17, 2013 within which to submit the supporting documents, and that it did not submit such documents within the said period, then the counting of the 120-day period should be reckoned on June 17, 2013. Accordingly, petitioner should have waited for the lapse of 120 days from June 17, 2013, before filing the instant Petition for Review.

Since petitioner filed the Petition for Review on July 29, 2013, which was within the mandatory and jurisdictional 120-day period, the Court finds that the case was filed prematurely. Consequently, this Court has no jurisdiction over the present case.

In the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (now Team Energy Corporation),*[2] the Supreme Court discussed the application of the 120-day and 30-day periods mentioned in Section 112 of the NIRC of 1197, as amended. It ruled that the 120-day waiting period is mandatory and jurisdictional, and that failure to observe such violates the doctrine of exhaustion of administrative remedies."

In fine, this Court finds no cogent reason to deviate from the previous ruling that the Petition for Review should be denied.

In the case of *Ferdinand Marcos et al. vs. Hon. Raul Manglapus et al.*[3], the Supreme Court emphasized that in all motions for reconsideration, the burden is upon the movant, petitioner herein, to show that there are compelling reasons to reconsider the decision of the Court. In the present case, petitioner was not able to convince the Court *En Banc* that its ruling is erroneous, improper, contrary to law or evidence. Having failed to do so, the petitioner's Motion for Reconsideration must fail.

WHEREFORE, premises considered, the "Motion for Reconsideration" is **DENIED for lack of merit**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[2] G.R. No. 180434, January 20, 2016.
[3] *Marcos vs. Manglapuz*, G.R. No. 88211, October 27, 1989.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice