REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

NOKIA (PHILIPPINES), INC., Petitioner,	**CTA CASE NO. 8679**
	Members:
- versus -	**DEL ROSARIO,** *PJ,* **UY,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 16 2017 ; 2:48 p.m

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RESOLUTION

MINDARO-GRULLA, *J.*:

For this Court's resolution is petitioner's **Motion for Reconsideration**, filed on August 26, 2016, without respondent's comment as per Records Verification dated October 7, 2016 pursuant to the Resolution dated October 14, 2016.

Petitioner seeks reconsideration of the Court's Decision promulgated on August 9, 2016 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review filed by Nokia (Philippines), Inc. is hereby **DISMISSED** for lack of jurisdiction.
>
> **SO ORDERED**."

In its motion, petitioner contends that the Court failed to quote the pertinent portion of the ruling in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue* which explained why the claim for refund by Pilipinas Total Gas, Inc. was not premature. It avers that in the instant case, upon filing of the administrative claim on March 1, 2013, petitioner already attached all the documents it deemed necessary to establish its claim for refund. According to petitioner, the reservation to submit additional documents is merely an indication of a suggestion or submission and should not be taken as absolute and conclusive, which would imply that the documents submitted is not complete.

Petitioner asserts that there was inaction on the part of the respondent because it did not decide the claim within 120 days, which is tantamount to the denial of the claim. Petitioner manifests that the inaction referred to under Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended pertains to the inability of the BIR to decide the refund claim within the prescribed 120 days. The BIR's inaction is allegedly not negated by the issuance of notices to submit additional documents, and thus, it was proper for petitioner to elevate its claim before this Court and try the present case *de novo*.

The Court finds petitioner's arguments unmeritorious.

Petitioner cites certain portions of the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*,[1] to wit:

> "The alleged failure of Total Gas to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction. First, the 120-day period had commenced to run and the 120+30 day period was, in fact, complied with. As already discussed, **it is the taxpayer who determines when complete documents have been submitted for the purpose of the running of the 120-day period.** It must again be pointed out that this in no way precludes the CIR from requiring additional documents necessary to decide the claim, or even denying the claim if the taxpayer fails to submit the additional documents requested.

[1] G.R. No. 207112, December 8, 2015.

xxx xxx xxx"

Indeed, as held in the assailed Decision, it is the taxpayer who determines when complete documents have been submitted for the purpose of the running of the 120-day period. However, as pointed out by the Supreme Court in the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[2], and as quoted in the assailed Decision:

> "To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) days within which to submit the documentary requirements sufficient to support his claim, **unless given further extension by the CIR**. Then, upon filing by the taxpayer of his complete documents to support his application, **or expiration of the period given**, the CIR has 120 days within which to decide the claim for tax credit or refund. **Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other additional documents to complete his administrative claim, the 120 day period allowed to the CIR begins to run from the date of filing.**" (*Emphasis supplied*)

In the instant case, petitioner did not manifest on the day of its filing of the administrative claim that it will not submit any other additional documents to complete its claim. In fact, as admitted by petitioner in its motion, it even made a reservation to submit additional documents. Moreover, in a letter dated May 16, 2013, it specifically requested for an extension of until June 17, 2013, within which to submit the supporting documents. Hence, petitioner cannot now claim that it submitted complete documents as of the date of the filing of administrative claim.

Also, in applying the above quoted ruling, the Court counted the 120 day period to decide on the claim for refund from the expiration of the extension period given, which is until June 17, 2013 and concluded that the instant petition filed on July 29, 2013 was prematurely filed. The pertinent portion of the assailed Decision is reiterated as follows:

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[2] G.R. No. 207112, December 8, 2015.

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"Petitioner again wrote to respondent on May 16, 2013 request an additional period of thirty (30) days from receipt thereof, or until June 17, 2013 to submit the required documents.[3] Thereafter, petitioner filed its judicial claim before this Court on July 29, 2013.[4]

On November 29, 2013, petitioner received another letter from respondent, acknowledging petitioner's submission of invoices, lists, and other documents but stating that some of the other necessary documents have not yet been submitted. She again requested for petitioner's submission of the required documents within fifteen (15) days from receipt thereof, and further stated that should it fail to comply within the desired date, she shall be constrained to deny petitioner's claim for refund.

From the foregoing, it can be observed that petitioner itself repeatedly requested the granting of an additional period, within which to submit the 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 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 petitioner's submission of complete documents, or upon manifestation of petitioner that it no longer wishes to submit any additional documents, that the 120-day period would begin to run.

In the instant case, considering that petitioner itself asked for an extension of 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.

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[3] Exhibit "R-9", BIR Records, p. 16.
[4] Docket, p. 7.

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

Finding no cogent reason to reverse the assailed Decision, the dismissal of the Petition for Review filed by Nokia (Philippines), Inc. should be affirmed.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is hereby **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice