REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 1114** (CTA Case No. 8289)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS,** and **RINGPIS-LIBAN,** JJ.
TRANS-ASIA POWER GENERATION, Respondent.	***Promulgated:***
	SEP 08 2015 2:15 p.m.

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DECISION

UY, J.:

This Petition for Review[1] filed on January 22, 2014 seeks the modification of the Decision[2] dated September 26, 2013 and the Resolution[3] dated December 19, 2013, both promulgated by the Special Second Division of this Court (Court in Division) in CTA Case No. 8289, entitled, *"Trans-Asia Power Generation, Petitioner, versus Commissioner of Internal Revenue, Respondent,"* the dispositive portions of which respectively read:

[1] EB Docket, pp. 7 to 20.
[2] EB Docket, pp. 21 to 58; Penned by Associate Justice Juanito C. Castañeda, Jr., and concurred in by Associate Justice Caesar A. Casanova and Associate Justice Cielito N. Mindaro-Grulla.
[3] EB Docket, pp. 59 to 64; *supra*.

<u>Decision dated September 26, 2013</u>:

"**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED.** The assessment issued by respondent against petitioner covering deficiency VAT for the first quarter of 2008 is hereby **REDUCED** to ₱936,091.16. Accordingly, petitioner is hereby **ORDERED TO PAY** basic deficiency VAT in the amount of ₱936,091.16, twenty-five percent (25%) surcharge in the amount of ₱234,022.79 pursuant to Section 248(A)(3) of the NIRC of 1997, as amended, and twenty percent (20%) deficiency interest for late remittance of VAT in the amount of ₱1,193,727.19 pursuant to Section 249(B) of the NIRC of 1997, as amended, or in the total amount of ₱2,363,841.14, computed as follows:

Basic Deficiency VAT	₱ 936,091.16
Add: 25% Surcharge	234,022.79
Subtotal	**₱1,170,113.95**
Add: 20% Interest for late remittance of VAT	1,193,727.19
Total	**₱2,363,841.14**

In addition, petitioner is hereby **ORDERED TO PAY:**

a) Deficiency interest at the rate of 20% per annum on the basic deficiency VAT of ₱936,091.16 computed from April 25, 2008 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997;

b) Delinquency interest at the rate of 20% per annum on the amount of the ₱1,170,113.95 representing the basic deficiency VAT of ₱936,091.16 and 25% surcharge of ₱234,022.79 computed from March 31, 2011 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of 1997, as amended; and

c) Delinquency interest at the rate of 20% per annum on the deficiency interest which have accrued as afore-stated in (a) and on the 20% deficiency interest for late remittance of VAT in the amount of ₱1,193,727.19 computed from March 31, 2011 until full payment thereof pursuant to Section 249(C)(3) of the NIRC of

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1997, as amended.

SO ORDERED."

<u>Resolution dated December 19, 2013</u>:

"**WHEREFORE,** premises considered, respondent's **"MOTION FOR PARTIAL RECONSIDERATION (RE: Decision promulgated on September 26, 2013)"** is **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), empowered to perform the duties of her office, including, among others, the power to decide disputed assessments, and such other matters vested in her in the National Internal Revenue Code (NIRC) and other special laws. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Trans-Asia Power Generation is a domestic corporation duly organized under and by virtue of the laws of the Republic of the Philippines, with its principal office at Level 11, Phinma Plaza, 39 Plaza Drive, Rockwell Center, Makati. It owns and operates 52 megawatt (MW) power plant located in Norzagaray, Bulacan, which primarily supplies electricity to a cement plant in Bulacan owned by Holcim Philippines, Inc. Since not all generated power are consumed by the said cement plant, respondent sells the excess generated power to various participants in the Wholesale Electricity Spot Market (WESM), administered and managed by the Philippine Electricity Marketing Corporation (PEMC). For its sale of electricity to WESM, respondent issues official receipts in the name of PEMC.

On June 1, 2009, respondent received a Preliminary Assessment Notice (PAN) dated May 9, 2009 from petitioner proposing to assess respondent the amount of ₱8,848,426.50 for deficiency VAT for the period covering January to March 2008. Shortly thereafter, on June 16, 2009, respondent sent a letter detailing its disagreement over the proposed assessment.

On September 16, 2009, respondent received an Assessment Notice and a Formal Letter of Demand from petitioner assessing respondent for deficiency VAT (including interest as of August 31, 2009) in the amount of ₱9,086,799.29, allegedly due to undeclared gross receipts of ₱58,831,163.52.

On October 16, 2009, respondent filed a Protest Letter against the said Assessment Notice and Formal Letter of Demand. On April 12, 2011, respondent received a Final Decision on Disputed Assessment (FDDA) dated January 31, 2011, denying respondent's protest.

On the basis of the FDDA, which constitutes as a denial of respondent's protest, respondent filed its Petition for Review with the Court in Division on May 12, 2011 docketed as CTA Case No. 8289 entitled ***"Trans-Asia Power Generation, Petitioner, versus Commissioner of Internal Revenue, Respondent"***, in accordance with Section 3(a) of Rule 8 of the Revised Rules of the Court of Tax Appeals and Section 228 of the NIRC of 1997.

Petitioner filed her Answer in said case on June 9, 2011[4], interposing, among others, certain Special and Affirmative Defenses, to wit: that the assessment for deficiency VAT in the amount of P9,277,187.58 was issued in accordance with law and implementing rules and regulations and that Section 4.108-3 of Revenue Regulations No. 16-2005 or the Consolidated Value-Added Tax Regulations of 2005 defined and set specified rules on selected services. Paragraph (f) thereof provides that sale of electricity shall be subject to twelve percent VAT on their Gross Receipts.

Moreover, it alleges in said Answer that, while it is true that universal charges and benefits to host communities do not form part of taxable gross receipts, however, herein respondent failed to establish the basis as to how the said amount identified as universal charges and benefits to host communities was computed, to whom said amount was paid, and proof of such payments. In the absence thereof, said contention is without factual basis to merit the exclusion of said amount from the taxable gross receipts. Thus, it was petitioner's prayer that CTA Case No. 8289 be DISMISSED for lack of merit.

After the pre-trial conference held on August 18, 2011[5], the

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[4] Division Docket (CTA Case No. 8289), pp. 155-160.
[5] Division Docket (CTA Case No. 8289), p. 176

parties filed their Joint Stipulation of Facts and Issues on September 5, 2011[6]. The same was approved by the Court in Division in the Resolution dated September 7, 2011[7], thus terminating the pre-trial.

During trial, the parties presented their respective testimonial and documentary evidence to prove their case. On November 7, 2012[8], CTA Case No, 8289 was submitted for decision after herein petitioner filed her Memorandum on October 2, 2012[9], and herein respondent filed its Memorandum on November 5, 2012[10].

On September 26, 2013, the Court in Division rendered the assailed Decision[11] partially granting the Petition for Review in CTA Case No. 8289 whereby the assessment issued against respondent covering deficiency VAT for the first quarter of 2008 was reduced to ₱936,091.16, plus twenty-five percent (25%) surcharge in the amount of ₱234,022.79, and twenty percent (20%) deficiency interest for late remittance of VAT in the amount of ₱1,193,727.19; or in the total amount of ₱2,363,841.14. In addition, respondent was ordered to pay: a) deficiency interest at the rate of 20% per annum on the basic deficiency VAT of ₱936,091.16, computed from April 25, 2008 until full payment thereof; b) delinquency interest at the rate of 20% per annum on the amount of the ₱1,170,113.95 representing the basic deficiency VAT of ₱936,091.16 and 25% surcharge of ₱234,022.79, computed from March 31, 2011 until full payment thereof; and c) delinquency interest at the rate of 20% per annum on the deficiency interest which have accrued as aforesaid and on the 20% deficiency interest for late remittance of VAT in the amount of ₱1,193,727.19, computed from March 31, 2011 until full payment thereof.

Aggrieved, petitioner filed a *Motion for Partial Reconsideration (Re: Decision promulgated on September 26, 2013)*[12] through registered mail on October 14, 2013 and received by the Court in Division on October 21, 2013. The said Motion was denied by the Court in Division in the assailed Resolution dated December 19, 2013[13] for lack of merit.

On January 22, 2014, petitioner filed the instant Petition for

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[6] Division Docket (CTA Case No. 8289), pp. 177-180
[7] Division Docket (CTA Case No. 8289), p. 181
[8] Division Docket (CTA Case No. 8289), p. 446
[9] Division Docket (CTA Case No. 8289), pp. 425-444
[10] Division Docket (CTA Case No. 8289), pp. 412-424
[11] EB Docket, pp. 21 to 58; Division Docket (CTA Case No. 8289), pp. 468 to 505.
[12] Division Docket (CTA Case No. 8289), pp. 506 to 514.
[13] EB Docket, pp. 59 to 64; Division Docket (CTA Case No. 8289), pp. 529 to 534.

Review[14] before the Court *En Banc* within the extension period of fifteen (15) days granted by the Court *En Banc* from January 7, 2014, or until January 22, 2014 . Petitioner prays in the instant petition for the modification of the Decision dated September 26, 2013, and of the Resolution dated December 19, 2013; and for the issuance of an order finding respondent liable to pay the deficiency VAT in the amount of ₱9,277,187.58 for the first quarter of 2008, plus 25% surcharge and 20% deficiency and delinquency interest pursuant to Section 248 and 249 (B) of the NIRC of 1997, as amended.

Respondent filed its Comment to the instant Petition on May 15, 2014[15], alleging among others, that RMC No. 71-2012, which rationalized the remittance of VAT on power generation and other related charges with Section 108 of the NIRC of 1997, has already clarified the issues and instituted certain procedures to address the tax implications affecting the electric power industry. As clearly provided in RMC No. 71-2012, generators such as respondent herein are only required to remit the amount of deferred VAT prior to August 25, 2012 (thus covering the instant case) which they have collected from DUs/ECs and which the latter collected from end-users and/or customers.

Considering however the issues raised by the parties in their respective pleadings, the Court *En Banc* resolved to give due course to the instant Petition for Review and required the parties to submit their respective Memorandum.[16]

After the filing of respondent's Memorandum[17] on July 22, 2014 and petitioner's Memorandum[18] on August 20, 2014, the instant case was submitted for decision on September 24, 2014.[19]

Hence, this Decision.

THE ISSUE

Petitioner raises a sole issue for the Court *En Banc's* resolution, to wit:

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[14] EB Docket, pp. 7 to 20.
[15] EB Docket, pp. 71 to 86.
[16] Resolution dated June 10, 2014, EB Docket, pp. 88 to 89.
[17] EB Docket, pp. 96 to 118.
[18] EB Docket, pp. 119 to 128.
[19] EB Docket, pp. 130 to 131.

"Whether or not respondent is liable for deficiency VAT in the amount of P9,277,187.58 for the period of January 1, 2008 to March 31, 2008 plus surcharges and interest."[20]

Petitioner's arguments:

Petitioner contends that the issuance of official receipts presupposes actual receipt of payment indicated therein. Thus, any amount stated in the official receipts should allegedly be included in gross receipts which will then be the basis for the computation of VAT. According to petitioner, respondent was assessed for deficiency VAT and the same was computed based on the official receipts issued covering the period January 1 to March 31, 2008.

As allegedly admitted by respondent, it recognized the amount in the invoice it issued during the first quarter of 2008, which it bills to Philippine Electricity Marketing Corporation (PEMC), as revenue for purposes of its financial reporting in accordance with the accrual method of accounting. Thus, any corresponding VAT due to the gross receipts issued during the first quarter of 2008 should have allegedly formed part of respondent's gross receipts subject to VAT for the first quarter of 2008.

Moreover, petitioner emphasizes that respondent at no time, claimed that it never incurred gross sales for the third and fourth quarters of taxable year 2008; and that payment during the said quarters were merely correlated with the sales made during the first quarter. Thus, any amount of VAT paid during the third and fourth quarters of taxable year 2008 is for the gross income obtained during these periods; and absent any proof that respondent never incurred any sale for the said quarters, the presumption is that the amount paid during this period is for the VAT due on gross receipts earned during this period.

Petitioner maintains that respondent's gross receipts for the first quarter of taxable year 2008 is subject to VAT which should be remitted to the BIR; and failure of respondent to remit the VAT component of the gross income justifies petitioner's assessment.

Lastly, petitioner alleges that under Revenue Memorandum Circular (RMC) No. 61-2005, Universal Charges and Benefits to Host

[20] EB Docket, pp. 10 and 121.

Communities shall be excluded in determining the gross receipts of the generation, transmission, and distribution companies and electric cooperatives; and that the same, however, must be duly substantiated. Allegedly, respondent failed: (1) to duly prove its claim that the Universal Charges in the amount of ₱1,781,600.00 had been remitted to the appropriate agency; and (2) to establish the basis as to how the said amount was computed. Hence, in the absence of any proof, the same shall be included in the taxable gross receipts.

Respondent's counter-arguments:

Respondent counters that due to special rules and regulations governing the electric power industry, it is not liable for deficiency VAT, surcharges and penalties.

As mentioned earlier, respondent invokes the provisions of Revenue Memorandum Circular (RMC) No. 71-2012 which rationalized the remittance of VAT on power generation and other related charges with Section 108 (Value Added Tax on Sale of Services and Use or Lease of Properties), and submits that the same has already clarified the issues and instituted certain procedures to address the tax implications affecting the electric power industry.

As clearly provided in RMC No. 71-2012, generators such as respondent herein, are allegedly required to remit the amount of deferred VAT prior to August 25, 2012 (thus covering the instant case) which they have collected from DUs/ECs and which the latter have collected from end-users and/or customers. Respondent therefore argues that it cannot be assessed deficiency input VAT for its sales prior to August 25, 2012; and accordingly, respondent cannot be liable for interest and penalties for VAT which it has not yet collected or received from PEMC; specifically, for the 20% interest for late remittance of VAT in the amount of ₱1,193,727.19.

Finally, respondent stresses that it has fully substantiated its remittance of the Universal Charges and Benefits to Host Communities collected by respondent to the appropriate government agencies.

THE COURT *EN BANC*'S RULING

On the basis of respondent's sale of electricity, as covered by official receipts, petitioner assessed respondent for deficiency VAT for the period January 1, to March 31, 2008.

Without doubt, VAT should be imposed on the amounts received by respondent during the first quarter of 2008 as advance payments from PEMC covering its sale of electricity, pursuant to Sections 105 and 108 of the NIRC of 1997, as amended, the pertinent provisions of which read as follows:

> "SEC. 105. *Persons Liable.* — **Any person who, in the course of trade or business, sells,** barters, exchanges, leases **goods or properties**, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in **Sections** 106 to **108** of the Code.
>
> xxx xxx xxx." *(Emphases supplied)*
>
> "SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* –
>
> (A) *Rate and Base of Tax.* – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: *Provided,* That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%),[21] after any of the following conditions has been satisfied:
>
> xxx xxx xxx
>
> **The phrase *'sale or exchange of services'* means** the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including xxx **sales of electricity by generation companies, transmission, and distribution companies** xxx.
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> xxx xxx xxx
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> **The term *'gross receipts'* means the total amount of money or its equivalent** representing the

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[21] The 12% VAT rate took effect on February 1, 2006. Refer to RMC No. 7-2006.

> contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services **and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person**, excluding value-added tax.
>
> xxx xxx xxx." *(Emphases supplied)*

As to the manner of payment of VAT due, Section 114 of the NIRC of 1997, as amended, in relation to Section 4.114-1 of Revenue Regulations No. 16-2005[22], provides as follows:

> "SEC. 114. *Return and Payment of Value-added Tax.* —
>
> (A) *In General.* – **Every person liable to pay the value-added tax** imposed under this Title **shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer**: *Provided, however,* **That VAT-registered persons shall pay the value-added tax on a monthly basis**.
>
> xxx xxx xxx." *(Emphases supplied)*
>
> "SEC. 4.114-1. *Filing of Return and Payment of VAT.*—
>
> (A) *Filing of Return.* — **Every person liable to pay VAT shall file a quarterly return of the amount of his quarterly gross sales or receipts within twenty five (25) days following the close of taxable quarter using the latest version of Quarterly VAT Return.** The term *'taxable quarter'* shall mean the quarter that is synchronized to the income tax quarter of the taxpayer (i.e., the calendar quarter or fiscal quarter).
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> xxx xxx xxx
>
> **The monthly VAT Declaration (BIR Form 2550M) of taxpayers whether large or non-large shall be filed**

[22] SUBJECT: Consolidated Value-Added Tax Regulations of 2005.

> **and the taxes paid not later than the 20th day following the end of each month.**
>
> xxx xxx xxx." *(Emphases supplied)*

In instances of late payment of VAT due, deficiency interest is imposed until full payment of the corresponding VAT, in accordance with Section 249 of the NIRC of 1997, *viz*:

> "SEC. 249. *Interest.* –
>
> (A) *In General.* – There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.
>
> (B) *Deficiency Interest.* – Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
>
> xxx xxx xxx."

In the instant case, it is clear that the amount of P65,458,810.76 received by respondent from PEMC during the first quarter of 2008 for cost of electricity falls within the definition of gross receipts subject to 12% VAT. As the seller of the electricity, respondent is mandated to pay the output tax due on its gross receipts notwithstanding the fact that the VAT due thereon has not yet been paid by its buyers.

The corresponding VAT for the questioned receipts was subsequently paid by herein respondent, subject to payment of interest for late remittance of said VAT.

We affirm the findings of the Court in Division that respondent collected the 12% VAT related to the amount of P65,458,810.76 as advance payment from PEMC, and subsequently remitted the same to the BIR. We likewise agree with the Court in Division that respondent is liable to pay interest for late remittance of its VAT payments for the first quarter of 2008, and We quote:

> "However, for belatedly remitting the 12% VAT due on the P65,458,810.76 cost of electricity advanced by PEMC during the first quarter of 2008, petitioner shall be held liable for the 20% deficiency interest imposed under Section 249 (B) of the NIRC of 1997, as amended.
>
> Pursuant to Section 114(A) of the NIRC of 1997, as implemented by Section 4.114-1 of RR No. 16-05, the prescribed period for the filing (through Electronic Filing and Payment System or EFPS) of petitioner's Monthly VAT Declarations and payment of the VAT is within twenty-two (22) days following the end of the month. For the Quarterly VAT Return, the same should be filed and the corresponding VAT should be paid within twenty-five (25) days following the close of the taxable quarter.
>
> Evidence shows that [respondent] received from PEMC the advance payments of ₱20,741,777.75 and ₱44,717,033.01 on January 29, 2008 and March 27, 2008, respectively. The 12% VAT of ₱2,489,013.33 pertaining to the advance payment of ₱20,741,777.75 should have been remitted to the BIR on February 22, 2008, at the latest. On the other hand, the 12% VAT of ₱5,366,043.96 pertaining to the advance payment of ₱44,717,033.01 should have been remitted to the BIR at the latest on April 25, 2008, to wit:

Exhibit	OR No.	Date of OR	Advance Payment for Cost of Electricity	12% VAT Due	Due Date for Filing of VAT Return and Payment of VAT
"SS", p.10 and "UU", p. 1	3084	Jan. 29, 2008	20,741,777.75	2,489,013.33	Feb. 22, 2008
"SS", p.23 and "UU", pp. 4-6	3097	Mar. 27, 2008	44,717,033.01	5,366,043.96	April 25, 2008
			65,458,810.76	**7,855,057.29**	

> Based on the due dates and [respondent]'s actual dates of VAT payments on the ₱65,458,810.76 cost of electricity advanced by PEMC for the first quarter of 2008, [respondent] is liable to pay deficiency interest in the amount of ₱1,193,727.19, computed as follows:

Due Date for Filing of VAT Return and Payment of VAT (a)	Actual Date of Filing of VAT Return & Payment of VAT to the BIR (b)	Exhibit	Number of Days Late (c)=(b)–(a)	12% VAT Actually Remitted to the BIR	Should-be 12% VAT (d)	20% Interest (e)=(c)÷365 days × (d) × 20%
2/22/2008	10/23/2008	"EEE", p. 3	244	1,092,543.79	1,092,543.79	146,071.61
	11/21/2008	"FFF", p. 3	273	1,400,391.09	1,396,469.54[23]	208,896.54
Subtotal				**2,492,934.88**	**2,489,013.33**	**354,968.15**
4/25/2008	11/21/2008	"FFF", p. 3	210	870,850.12	870,850.12	100,207.41
	1/23/2009	"FFF", p. 3	273	180,284.22	180,284.22	26,968.54
	1/23/2009	"GGG", p. 3	273	5,309.38	5,309.38	794.23
	2/20/2009	"GGG", p. 3	301	5.95	5.95	0.98
	2/20/2009	"HHH", p. 3	301	66,171.83	66,171.83	10,913.82
	2/20/2009	"HHH", p. 3	301	4,251,397.52	4,243,422.46[24]	699,874.06
Subtotal				**5,374,019.02**	**5,366,043.96**	**838,759.04**
Total				**7,866,953.90**	**7,855,057.29**	**1,193,727.19**

We do not subscribe to petitioner's allegations that any amount of VAT paid during the third and fourth quarters of taxable year 2008 is for the gross income obtained during these periods, and that absent any proof that respondent never incurred any sale for the said quarters, the presumption is that the amount paid during this period is for the VAT due on gross receipts earned during this period.

This must be so because petitioner could have easily assailed the truthfulness of respondent's subsequent remittances of its corresponding VAT payments for the amounts received during the first quarter of 2008, and easily disproven the same, since she ought to know the tax records of all taxpayers.[25]

In this regard, petitioner, being the chief of the BIR, which is the repository of the pertinent Monthly VAT Declarations, Quarterly VAT Returns, and Summary Lists of Sales/Purchases filed by taxpayers, could have easily presented and offered in evidence the pertinent

[23] Arrived at by deducting the excess of ₱2,492,934.88 over ₱ 2,489,013.33 or the amount of ₱3,921.55 from ₱1,400,391.09.

[24] Arrived at by deducting the excess of ₱5,374,019.02 over ₱5,366,043.96 or the amount of ₱7,975.06 from ₱4,251,397.52

[25] *BPI-Family Savings Bank. Inc. vs. Court of Appeals, et al.*, G.R. No. 122480, April 12, 2000; and *Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation*, G.R. No. 180042, February 8, 2010.

documents filed by respondent for the concerned periods to show that the amounts in question were not remitted to the BIR. In not doing so, this disputable presumption comes to mind: *"That evidence willfully suppressed would be adverse if produced".*[26]

Correspondingly, for failure of petitioner to present controverting evidence pertaining to the belated payments of the VAT for the first quarter of 2008, the findings of the Court *a quo* must stand, and the imposition of the deficiency interest must be maintained.

Petitioner failed to substantiate her argument that respondent has not remitted the Universal Charges to the appropriate agency.

RMC No. 61-2005[27] specifically states that gross receipts shall not include Universal Charges implemented under R.A. No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), and Benefits to Host Communities under Energy Regulation 1-94.

The applicability of the foregoing RMC is not questioned by petitioner and she in fact agrees with the Decision of the Court in Division that benefits to host communities do not form part of the taxable gross receipts. However, petitioner claims that respondent failed to substantiate that the Universal Charges, in the amount of ₱1,781,600.00 had been remitted to the appropriate agency.[28]

We are not convinced.

The Court *En Banc* affirms the findings of the Court in Division that respondent remitted to the National Transmission Commission and National Grid Corporation of the Philippines, the Universal Charges which it collected during the first quarter of 2008 in the amount of ₱1,781,600.44,[29] as the same is fully supported by evidence consisting of official receipts, Universal Charge Bills, Statements of Account, other related documents, as well as billings

[26] Section 3(e), Rule 131, Rules of Evidence.
[27] SUBJECT: Clarifying the VAT Provisions of R.A. No. 9337 Applicable to the Power Industry.
[28] Docket, p. 14.
[29] Exhibits "TT," "SS," and "XX."

issued by the respondent with computation details.[30]

Clearly from the foregoing pieces of evidence, the Court *a quo* correctly concluded that the same should not form part of respondent's gross receipts, subject to VAT, for the first quarter of 2008. Being well-supported by the evidence on record, and there is no need to further elaborate on the matter.

A party who has not appealed from a Decision cannot seek any relief other than what is already provided in the judgment appealed from.

The Court *En Banc* notes that in its "Comment"[31] filed on May 15, 2014 and its "Memorandum"[32] filed on July 22, 2014, respondent prays not only for the denial of the instant Petition for Review, but also for the modification or reversal of the assailed Decision and Resolution promulgated by the Court in Division, so as to remove or delete the deficiency VAT, interest and penalties, pursuant to RMC No. 71-2012.

Notably, respondent did not file an appeal to assail the Decision rendered in CTA Case No. 8289.

It is a well-settled doctrine that a party who has not appealed from a Decision cannot seek any relief other than what is provided in the judgment appealed from.[33] Simply put, it is a fundamental principle that a party who does not appeal is not entitled to any affirmative relief.[34]

Considering that respondent did not appeal from the Decision or Resolution of the Court in Division, it cannot obtain from the Court *En Banc* any affirmative relief, other than that already granted in the Decision of the Court in Division, regardless of the merits of its arguments and contentions.

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[30] Exhibits "AA" to "AA-2," "BB" to "BB-2," "GG" to "GG-2," and "PP".
[31] Docket, pp. 71 to 86.
[32] Docket, pp. 96 to 118.
[33] *Lao, et al. vs. Special Plans, Inc.*, G.R. No. 164791, June 29, 2010.
[34] *Corinthian Gardens Association, Inc. vs. Spouses Reynaldo, et al.*, G.R. No. 160795, June 27, 2008; See also *Sps. Carrion vs. Court of Appeals*, G.R. No. 124271, August 22, 1996.

Thus, respondent can only advance any argument that it may deem necessary to defeat petitioner's claim or to uphold the Decision that is being disputed, and it can assign errors in its brief if such is required to strengthen the views expressed by the Court *a quo*. These assigned errors, in turn, may be considered by the appellate court solely to maintain the appealed decision on other grounds, but not for the purpose of reversing or modifying the judgment in respondent's favor and giving it other reliefs.[35]

As respondent failed to file a Motion for Reconsideration before the Court in Division, nor did it file a Petition for Review before the Court *En Banc,* it necessarily follows that it cannot be granted the affirmative relief it seeks in its Comment and Memorandum filed in the instant Petition for Review.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is hereby **DISMISSED** for lack of merit. Accordingly, the Decision dated September 26, 2013 and Resolution dated December 19, 2013 are hereby **AFFIRMED.**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

[35] *Lao, et al. vs. Special Plans, Inc.*, supra.

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

ROMAN G. DEL ROSARIO
Presiding Justice