Sib.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

DR. ANASTACIO L. DEIPARINE,
in his capacity as Administrator of the testate estate
of Beatriz A. Deiparine,
Petitioner,

Nov. 20/57

- versus -

C.T.A.
CASE NO. 264

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

x- - - - - - - - - - - - - - -x

D E C I S I O N

Petitioner Anastacio L. Deiparine is the surviving spouse and duly appointed administrator of the testate estate of his deceased wife, Beatriz Angeles Deiparine, who died in Talisay, Cebu, on April 12, 1950.

It appears that on April 10, 1951, the petitioner filed with the respondent, thru the Provincial Revenue Agent at Cebu City, the Estate and Inheritance Tax Return for the estate of his deceased wife, Beatriz Angeles Deiparine. On the basis of said return, the respondent, on June 5, 1952, issued an Estate and Inheritance Tax Assessment Notice, Exhibit A (p. 28, BIR rec.), demanding the payment of the total sum of ₱4,404.12, itemized as follows:

Estate tax		₱1,345.49
Inheritance tax:		
Anastacio Deiparine .	₱ 109.66	
Romulo Deiparine	1,296.25	
Juanita Angeles	1,652.72	
TOTAL		3,058.63
TOTAL AMOUNT DUE AND COLLECTIBLE		₱4,404.12

632

Later, or more particularly, on June 9, 1952, Juanita Angeles Agaran, sister of the deceased Beatriz Angeles Deiparine, filed with the respondent, thru the Provincial Revenue Agent at Boac, Marinduque, a separate and an independent Estate and Inheritance Tax Return for the estate of her late sister, Beatriz Angeles Deiparine. On the basis of the second return, the respondent, on August 14, 1954, issued an Estate and Inheritance Tax Assessment Notice, Exhibit B (p. 89, BIR rec.) demanding the payment of the total sum of ₱16,978.99, itemized as follows:

Estate tax	₱ 1,494.91	
5% surcharge on ₱1,345.49 for late payment	67.27	
1% interest from 1/12/52 to 9/15/54	478.37	
Compromise for no notice of death	5.00	
Compromise for late payment	20.00	
TOTAL		₱ 2,065.55
Inheritance Tax:		
Romulo Deiparine	₱ 9,419.18	
Juanita Angeles	1,990.88	
Tomas Angeles	5.01	
Luis Hidalgo	3.34	
Juliana Hidalgo	3.34	
Amando Angeles	2.50	
Librado Angeles	2.50	
TOTAL	₱11,426.75	
5% surcharge on ₱3,058.63 for late payment	152.93	
1% interest from 4/12/52 to 9/15/54	3,313.76	
Compromise for late payment	20.00	
TOTAL		14,913.44
TOTAL AMOUNT DUE AND COLLECTIBLE		₱16,978.99

The petitioner protested against the second estate and inheritance tax assessment. In a letter dated September 6, 1954, Exhibit G (p. 98 BIR rec.), he informed the respondent that Romulo Deiparine who was made to appear in the second tax return filed by his sister-in-law, Juanita Angeles Agaran, as a stranger to the estate is in truth and in fact his legitimate son begotten with his deceased wife Beatriz Angeles Deiparine. The petitioner then requested for the reconsideration of the second estate and inheritance tax assessment which was based on the said second tax return and at the same time, he expressed his willingness to pay the estate and inheritance taxes as assessed on June 5, 1952, in the total amount of ₱4,404.12.

In a letter, Exhibit I (p. 145 BIR rec.) dated March 20, 1956, the respondent denied petitioner's request for reconsideration informing him that after a careful study of the matter, he found Romulo Deiparine to be a stranger to the decedent Beatriz Angeles Deiparine. Respondent therefore requested the payment of the sum of ₱19,989.21, as transfer taxes and their increments computed as follows:

Estate tax	₱ 1,494.91	
5% surcharge	74.75	
1% monthly interest on ₱1,494.91 from 1/12/52 to 5/12/56	777.35	
Compromise (No notice of death)	5.00	
Compromise for late payment	20.00	
TOTAL		₱ 2,372.01

Inheritance tax	₱11,426.75
5% surcharge	571.34
1% monthly interest on ₱11,426.75 from 4/12/52 to 5/12/56	5,599.11
Compromise for late payment	20.00
TOTAL	₱17,617.20
TOTAL AMOUNT DUE AND COLLECTIBLE	₱19,989.21

The respondent demanded from the petitioner the payment of the above stated assessed amount within ten (10) days from receipt of the assessment, to the City Treasurer of Cebu City, with the warning that unless payment was made within the said period, the collection thereof would be enforced by warrant of distraint and levy. Hence, on April 16, 1956, the petitioner filed his petition for review with this Court.

The petitioner in open court (pp. 19-21, t.s.n.) as well as in his memorandum (pp. 4-5) admits the correctness of the estate tax assessment as well as the inheritance tax assessment with respect to the other six beneficiaries of the will except as regards Romulo Deiparine who, it is claimed, is a legitimate son of the deceased Beatriz Angeles Deiparine and as such, should therefore be required to pay the original inheritance tax assessment as embodied in Exhibit A, in the amount of ₱1,296.25, which was computed on the basis of the rate corresponding to legitimate children under Section 86 (a) of the Tax Code.

The respondent, on the other hand maintains, relying solely on the Estate and Inheritance Tax Return (pp. 61-62 BIR rec.) filed on June 9, 1952 by Juanita Angeles Agaran in Marinduque, and her letter, Exhibit 12-A (pp. 154-155 BIR rec.) to Provincial Revenue Agent Fidel Alberto of Oriental Mindoro dated September 3, 1955, that Romulo Deiparine as stranger to the estate of the deceased Beatriz Angeles Deiparine should be made to pay the five-fold rate of inheritance tax corresponding to strangers which amounts to ₱9,419.18 as prescribed by Section 86 (e) of the Tax Code.

The only question for us to decide, therefore, which is one of fact, is whether or not Romulo Deiparine is a legitimate son of the deceased Beatriz Angeles Deiparine for the purpose of applying the corresponding rate of inheritance tax prescribed under Section 86 (a) or (e) of the Tax Code.

We find the evidence presented by the petitioner in support of his contention regarding the status of Romulo Deiparine as a legitimate son of the deceased Beatriz Angeles Deiparine sufficiently strong and convincing. In an order, Exhibit C, dated May 27, 1950, of the probate court in Special Proceedings No. 651-R, Court of First Instance of Cebu, admitting to probate the last will and testament of the deceased Beatriz Angeles Deiparine, Romulo Deiparine was declared to be a <u>son</u> of the testatrix. On June 24, 1950, a motion for reconsideration (Exhibit D) of said order was filed by Juanita Angeles Agaran, but for reasons of her own, she voluntarily withdrew her motion on June 30, 1950

(Exhibit E). The order of the probate court, Exhibit C, declaring Romulo Deiparine to be a legitimate son of the deceased Beatriz Angeles Deiparine begotten by her spouse, the petitioner herein, has now become final, no appeal thereto having been made by any of the interested parties.

In addition, the petitioner presented as documentary evidence, Exhibit J-1 (p. 96 BIR rec.) which is a photograph of the birth certificate of Romulo Deiparine, issued on July 21, 1932 by the Civil Registrar of the Municipality of Cebu, (now City of Cebu) Cebu. This photograph of the birth certificate was submitted as evidence after it was shown to the satisfaction of this Court that the original was lost (Sec. 46, (a), Rule 123, Rules of Court) and the same was admitted without objection on the part of the respondent. This Exhibit J-1, is a certificate of what "appears in the Civil Register of Births in the Office of the Municipal Treasurer of Cebu, Cebu," and it shows that Romulo Deiparine is the son of the deceased Beatriz Angeles Deiparine and Dr. Anastacio L. Deiparine.

The petitioner must have presented, Exhibit J-1, pursuant to the provisions of Article 265 of the Civil Code of the Philippines which considers "the record of birth appearing in the Civil Register" as sufficient proof of filiation of a legitimate child. And certainly, the record of birth appearing in the records of the Civil Registrar of the Municipality of Cebu, Cebu, or a certified copy thereof, as in the case at bar, is the best evidence to show and prove the maternity and/or paternity of Romulo Deiparine. What has been made evidence by law, this Court must consider.

As regards the record of birth of Romulo Deiparine, it is worthy to state that Tomas Cerilles, who is now 73 years old, was presented as a witness for the petitioner. He testified that he was the municipal treasurer of Cebu, Cebu from 1912 to 1934; that as such municipal treasurer he saw the original of the birth certificate of Romulo Deiparine; that he signed the original of the said birth certificate; and that the photograph of his signature appears on Exhibit J-1.

Mr. Marcelo Lucas, a lawyer and commerce graduate who has been working with the Bureau of Internal Revenue from May 1, 1937 up to the present, was also presented by the petitioner as a witness. He testified that he was assigned to investigate the estate and inheritance tax liability of the estate of the late Beatriz Angeles Deiparine and her heirs; that in the course of his investigation, he saw and examined the original of the birth certificate of Romulo Deiparine, and found the same to be genuine; and that in his report to the Collector of Internal Revenue, Exhibit L (p. 24 BIR rec.) he considered Romulo Deiparine as a son of the deceased Beatriz Angeles Deiparine.

The petitioner also submitted as documentary proof to support his claim that Romulo Deiparine is the son of his wife, the late Beatriz Angeles Deiparine, his income tax returns, Exhibits U, V and W for the years 1948, 1950 and 1951, respectively. In all these income tax returns, Romulo Deiparine was made to appear as the son of the petitioner with his deceased wife, Beatriz Angeles Deiparine.

In addition, the petitioner also submitted testimonial evidence to prove that Romulo Deiparine is the son and has continuously possessed the status of a legitimate child of the deceased Beatriz Angeles Deiparine. An array of six (6) competent and reliable witnesses were presented to establish this fact, namely, (1) Prudencio Ybud, Administrator of "Patria de Cebu", by virtue of an appointment signed by the Archbishop of Cebu; (2) Narciso Aliño, an agent of the Bureau of Internal Revenue since 1931; (3) Emerenciana Campo, an attendant in Dr. Deiparine's Clinic; (4) Dr. Cesar Filoteo, a prominent practicing physician and Dean, College of Medicine, Southwestern Colleges; (5) Dr. Anastacio L. Deiparine, the petitioner herein and the husband of the late Beatriz Angeles Deiparine; and (6) Romulo Deiparine whose maternal filiation is in question in the present case.

We deem it unnecessary to summarize in detail what all these witnesses testified to on the witness stand. It shall suffice to mention the fact that Dr. Cesar Filoteo a well known practitioner of Cebu City and Emerenciana Campo testified that they saw the late

Beatriz Angeles Deiparine give birth to a baby boy who was later on christened as Romulo Deiparine; that Emerenciana Campo took care of Romulo Deiparine when the latter was still a child; that Dr. Cesar Filoteo is the baptismal godfather of Romulo Deiparine, the sponsor of the latter's marriage, and the baptismal godfather of Romulo Deiparine's son; and that they both saw Romulo Deiparine grow from childhood to manhood.

As stated above, both Dr. Anastacio L. Deiparine and Romulo Deiparine took the witness stand. Dr. Anastacio L. Deiparine, the petitioner herein and the husband of the late Beatriz Angeles Deiparine, stated in clear and unmistakable terms that Romulo Deiparine is his son with his wife, the late Beatriz Angeles Deiparine; that he was the doctor who assisted his wife when the latter gave birth to Romulo Deiparine; that Dr. Cesar Filoteo and Emerenciana Campo were present when Romulo Deiparine was born and that he reared up Romulo Deiparine and spent for his support and education from the time he was born; and that up to the present, he is still supporting Romulo Deiparine who is now 24 years old.

Undoubtedly, no man is in a better position to know and say as to who is the son of Dr. Anastacio L. Deiparine with his legitimate wife than Dr. Deiparine himself. And with more reason should we be inclined to believe Dr. Anastacio L. Deiparine in the instant case, considering the fact that Romulo Deiparine also testified that from the time he saw the light of reason,he had always recognized Dr. Anastacio L. Deiparine as his father and the late Beatriz Angeles Deiparine as his mother; that they nursed him, feed him, supported him and sent him to school until he graduated with the degree of Doctor of Medicine.

The witnesses for the petitioner were subjected to a detailed and searching cross-examination by counsel for the respondent. However, they remained positive and sure as to their declarations, and all in all, their testimonies are clear and convincing as to leave no room for doubt that Romulo Deiparine is in truth and in fact the legitimate son of the deceased Beatriz Angeles Deiparine. The respondent on the other hand utterly failed to present evidence to sustain its claim to the contrary. As a matter of fact, the respondent did not even present Juanita Angeles Agaran, his sole informant regarding the filiation of Romulo Deiparine, nor did he advance any valid and plausible reason for not placing said material witness on the witness stand to sustain his contention that Romulo Deiparine is not related in any way to the deceased Beatriz Angeles Deiparine as is naturally to be expected under the circumstances.

The petitioner on the other hand has shown by concrete evidence that Juanita Angeles Agaran, upon whose sole and uncorroborated information the respondent based his finding that Romulo Deiparine is a total stranger to the deceased Beatriz Angeles Deiparine, that since the death of the latter, she (Juanita Angeles Angaran) had always been hostile towards the petitioner herein, presumably because her share in the inheritance from the testate estate of her deceased sister was not as much as she expected. As above stated, she filed on June 24, 1950, with the probate court a motion for reconsideration of the Court's order admitting the will of the deceased Beatriz Angeles Deiparine to probate and declaring Romulo Deiparine to be a legitimate son of the testatrix only to withdraw said motion six (6) days later for reasons of her own before the probate court could act upon it. On January 27, 1953 the said Juanita Angeles Agaran filed a complaint against the petitioner herein in Civil Case No. 927, Court of First Instance of Marinduque, for breach of contract, and notwithstanding the non-appearance of the petitioner as defendant in said case or his attorney during the trial, the Court of First Instance of Marinduque in a decision, Exhibit F, dismissed the complaint for lack of merit.

With these long line of documentary and testimonial evidence for the petitioner regarding the status of Romulo Deiparine as a legitimate son of the spouses Anastacio L. Deiparine and Beatriz Angeles Deiparine on the one hand and the lack of positive and concrete evidence for the respondent on the other to sustain the contrary, we find ourselves with no other alternative but to sustain the contention of petitioner that Romulo Deiparine is his son begotten by his deceased wife Beatriz Angeles Deiparine.

WHEREFORE, finding Romulo Deiparine to be the legitimate son of the deceased Beatriz Angeles Deiparine and the petitioner herein, Dr. Anastacio L. Deiparine, the rate of inheritance tax that should be applied is that provided for legitimate children under Section 86 (a) of our Tax Code and not the five-fold rate applicable to strangers as beneficiaries of the estate under Section 86 (e) of the same Code.

It appears that on the estate and inheritance tax liability of the estate of the late Beatriz Angeles Deiparine and her heirs, the petitioner has already made the following payments on the dates and in the amounts indicated below as evidenced by Official Receipts, Exhibits T, T-1, T-2:

Estate tax:		
August 17, 1955 ...	₱1,150.00	
October 17, 1955 ...	693.46	₱1,843.46
Inheritance tax:		
November 23, 1956		1,405.91
TOTAL		₱3,249.37

The inheritance tax due and demandable from the share received by Romulo Deiparine is not ₱9,419.18 inasmuch as he is not a stranger to the deceased, but only the sum of ₱1,296.25 as previously assessed by the respondent. Therefore, petitioner Anastacio L. Deiparine is hereby ordered to pay the Collector of Internal Revenue the total amount of ₱4,419.04 as estate and inheritance taxes itemized as follows:

Estate tax		₱1,494.91	
5% surcharge for late payment on ₱1,494.91		74.75	
1% monthly interest:			
From 1/12/52 to 8/17/55 on ₱1,494.91	₱ 642.81		
From 8/17/55 to 10/17/55 on ₱344.91	6.90	649.71	
TOTAL		₱2,219.37	
Less: Amounts previously paid:			
8/17/55	₱1,150.00		
10/17/55	693.46	1,843.46	₱ 375.91
Inheritance tax:			
Romulo Deiparine ..	₱1,296.25		
Juanita Angeles ...	1,990.88		
Tomas Angeles	5.01		
Luis Hidalgo	3.34		
Juliana Hidalgo ...	3.34		
Amando Angeles	2.50		
Librado Angeles ...	2.50	₱3,303.82	
5% surcharge for late payment on ₱2,007.57, the correct and uncontested amount assessed against all the other heirs, which was included in the notice and demand of March 20, 1956		100.37	
1% monthly interest:			
From 4/12/52 to 11/23/56 on ₱3,303.82	₱1,817.10		
From 11/23/56 to 11/20/57 on ₱1,897.91	227.75	2,044.85	
TOTAL		₱5,449.04	
Less: Amount paid on 11/23/56..		1,405.91	4,043.13
TOTAL AMOUNT DUE AND COLLECTIBLE			₱4,419.04

Without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, November 20, 1957.

AUGUSTO M. LUCIANO
Associate Judge

620

WE CON-

CUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge

(Note: Decision not appealed - Final.)